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Sup Ct

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 316

THE HECHT COMPANY, PETITIONER,

vs.

CHESTER BOWLES, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED SEPTEMBER 2, 1943.

CERTIORARI GRANTED OCTOBER 18, 1943.

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1 [Endorsed:] Filed: Dec. 8, 1942.

COMPLAINT FOR INJUNCTIVE RELIEF

(1) In the judgment of the Price Administrator the defendant has engaged in actions and practices which constitute a violation of Section 4 (a) of the Emergency Price Control Act of 1942 (Pub. L. 421, 77th Cong., 2nd Sess., C–26), hereinafter called the Act, in that it has violated The General Maximum Price Regulation, as amended hereinafter referred to as the Regulation, issued pursuant to Section 2 (a) of the Act; and, therefore, pursuant to Section 205 (a) of the Act, the Price Administrator brings this action to enforce Section 4 (a) of said Act and the Regulation.

(2) Jurisdiction of this action is conferred upon the court by Section 205 (c) of the Act.

(3) The defendant is and has at all times mentioned herein been engaged in the sale and delivery of commodities in the retail mercantile business within the District of Columbia United States of America.

(4) Pursuant to the provisions of Section 2 (a) of the Act, the Price Administrator published in the Federal Register the General Maximum Price Regulation, effective May 11, 1942 (7 F. R. 3153).

(5) The General Maximum Price Regulation, insofar as the same is material here, provides in substance:

2 (a) That on and after the effective date of the Regulation no person shall sell or deliver any commodity at a price higher than the maximum price permitted by the Regulation (Section 1499.1).

(b) That the seller's maximum price for any commodity shall be the highest price charged by the seller in March 1942 for the same or similar commodity (Section 1499.2).

(c) That the seller's maximum price for any commodity which cannot be determined as aforementioned (b) shall be determined by dividing the maximum price of the commodity by the replacement cost of the commodity, the percentage so obtained to be multiplied by the cost to him of the commodity being priced, and within 10 days after determining such maximum price the seller shall report said price to the Office of Price Administration upon a form duly filled out (Section 1499.3).

(d) Sellers of commodities subject to maximum prices shall preserve for examination all their existing records relating to the price which they charged for such commodities during March 1942 and shall prepare on or before July 1, 1942, on the basis of all available information and records and thereafter keep for examination by any person a statement showing the highest price charged during March 1942 for those commodities sold and delivered or offered for sale or delivery during said month with an appropriate description or identification of each such commodity (Section 1499.11).

3 (e) Every person selling commodities, the maximum prices of which are set by the regulation, shall keep records showing as precisely as possible the basis on which he determined the maximum prices for those commodities (Section 1499.12).

(f) Every person offering to sell cost-of-living commodities at retail shall plainly mark in a manner visible to the purchaser the maximum price of such commodity and shall designate such price as the maximum or ceiling price (Section 1499.13).

(6) Plaintiff says that the defendant company has violated the provisions of the General Maximum Price Regulation in the following particulars, to wit:

(a) Defendant has failed, neglected and refused to use the standards and methods provided in Sections 1499.2 and 1499.3 of the Regulation to determine the maximum prices on commodities sold or delivered, or offered for sale or delivery, by it since May 18, 1942, which said maximum prices so determined were in excess of the maximum prices permitted by the Regulation.

(b) Defendant posted as its maximum prices on cost-of-living commodities offered for sale at retail by it after May 18, 1942, prices in excess of the maximum prices permitted by the Regulation (Section 1499.13).

(c) That since May 18, 1942, the defendant has sold or delivered, or offered for sale or delivery, commodities subject to The General Maximum Price Regulation at prices in excess of the maximum prices permitted by the Regulation (Section 1499.1).

(d) That the defendant did not on or before July 1, 1942 prepare and keep for examination by any person during ordinary business hours a statement in accordance with the Regulation (Section 1499.11 [b1 and b2]).

4 (e) That the defendant, though continuously engaged in the retail sale and delivery of commodities subject to the Regulation, has failed, neglected and refused to keep

current records in conformity with the provisions of Section 1499.12 of said Regulation.

(f) That the defendant, though continuously engaged in the retail sale and delivery of cost-of-living commodities subject to the Regulation, did not on or before July 1, 1942, prepare and file with the appropriate War Price and Rationing Board a statement, relating to said cost-of-living commodities, in conformity with Section 1499.13 of said Regulation.

(g) That the defendant, though continuously engaged in the retail sale and delivery of cost-of-living commodities subject to the Regulation, has failed, refused and neglected to keep its statement, relating to said cost-of-living commodities, up to date in conformity with the provisions of Section 1499.13 of said Regulation.

Wherefore, the Price Administrator prays for a temporary restraining order and a preliminary and final injunction enjoining the defendant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with the defendant from:

(1) Selling, delivering, or offering for sale or delivery, any commodity in violation of the General Maximum Price Regulation as heretofore or hereafter amended and attempting or agreeing to anything in violation thereof or in violation of any regulation adopted pursuant to said Section 2 (a) establishing maximum prices for said commodities; and

(2) Failing to keep complete and accurate records for inspection by the Office of Price Administration as required by said General Maximum Price Regulation as heretofore or hereafter amended, or by any other regulation adopted pursuant to Section 201 (b) of the Act requiring the making or keeping of records or the making of reports.

Dated December 8, 1942.

EDWARD M. CURRAN,
U. S. Attorney for the District of Columbia,

DAVID GINSBURG,
David Ginsburg,
General Counsel, Office of Price Administration,

BRUNSON MACCHESNEY,
Brunson MacChesney,
Assistant General Counsel,

FLEMING JAMES, JR.
Fleming James, Jr.
Chief, Trial Litigation Branch,

GEORGE M. AUSTIN,
George M. Austin,
Trial Litigation Attorney,

HAROLD SWOPE,
Harold Swope,
OPA District Attorney, District of Columbia,
Attorneys for Office of Price Administration.

Address: Office of Price Administration, Temporary Building D, 4th Street and Independence Ave. SW., Washington, D. C.

7 [Endorsed:] Filed Dec. 8, 1942.
[Title omitted.]

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves the court for a preliminary injunction enjoining the defendant, its officers, servants, agents, employees, and any other persons in active concert or participation from directly or indirectly:

1. Selling or delivering or offering for sale or delivery any commodity, subject to The General Maximum Price Regulation, at a price in excess of the maximum permitted by the Regulation.

2. Violating any of the provisions of the Act or the Regulation as heretofore or hereafter amended.

The grounds for this motion are:

1. It appears from the affidavit of Lester Kaplan, Investigator and John Fath, Senior Business Executive for the Office of Price Administration, verified on the day of December 1942, and attached hereto, that the defendant, since May 16, 1942, has frequently, continuously and flagrantly violated the Act and The General Maximum Price Regulation and further that the said defendant will continue to violate the Act and the Regulation by selling or delivering, or offering for sale or delivery, commodities in violation of said General Maximum Price Regulation and in other ways unless immediately enjoined and restrained by this court.

8 2. It further appears from said affidavit that such continuing of sales and deliveries, or offers of sale and delivery of said commodities, will be injurious to the war effort of the nation with respect to the retail distribution of said commodities; will be detrimental to the national program against inflation and will particularly affect the general public, for said

general public will be, by the illegal practices of the defendant, coerced into paying prices in excess of those permitted by the regulation for commodities which directly affect the cost of living.

3. It further appears from said affidavit that each day such violations continue the danger of inflation is increased and the possibility of the breakdown of the national anti-inflation program becomes more apparent.

4. It further appears from said affidavits that defendant has failed and refused to comply with the provisions of the General Maximum Price Regulation in that it failed and refused to determine and file maximum prices upon commodities as required by § 1499.3 of said Regulation and failed to keep for inspection by the Office of Price Administration complete and accurate records of its maximum prices in accordance with §§ 1499.11 and 1499.12 of said Regulation and failed to file with the appropriate War Price and Rationing Board and keep up to date its statement relative to cost-of-living commodities as required by § 1499.13 of the Regulation.

EDWARD M. CURRAN,
U. S. Attorney for District of Columbia.

DAVID GINSBURG,
David Ginsburg,
General Counsel, Office of Price Administration;

BRUNSON MACCHESNEY,
Brunson MacChesney,
Assistant General Counsel,

FLEMING JAMES, JR.,
Fleming James, Jr.,
Chief, Trial Litigation Branch,

GEORGE M. AUSTIN,
George M. Austin,
Trial Litigation Attorney,

HAROLD SWOPE,
Harold Swope,
District Attorney, for OPA District of Columbia,

Attorneys for the Office of Price Administration.

Address: Office of Price Administration, Temporary Building D, 4th St. & Independence Ave. SW., Washington, D. C.

34 [Endorsed:] Filed: Dec. 8, 1942.
[Title omitted.]

TEMPORARY RESTRAINING ORDER

Whereas, the plaintiff has filed in the above-entitled cause a complaint praying for the issuance of a preliminary and final injunction and for a temporary restraining order without notice, and

Whereas, it appears from the affidavits of Lester Kaplan, John Faith, Raymond J. Singer and Robert E. Van Brunt, Investigators for the Office of Price Administration, attached to the motion for preliminary injunction herein, and upon showing made in open court, that pending notice and hearing upon the application for a preliminary injunction the defendant herein will, unless restrained by this court, prolong its violation of the General Maximum Price Regulation by continuing to sell or deliver, or offer to sell or deliver, commodities contrary to the provisions of said General Maximum Price Regulation, and

Whereas, it further appears from said affidavit:

1. That such continuing sales or deliveries, or offers of sale or delivery, would be injurious to the war effort and to the national anti-inflation program.

2. That the injury to the public, the defendant's competitors and the nation's war effort will be irreparable.

3. That each day of continuing violations increases the possibility that other retailers engaged in the sale of the same or similar commodities will be influenced or coerced into engaging in similar practices with an increased detrimental effect.

35 Now, therefore, it is hereby ordered:

1. That the defendant herein, its officers, agents, servants, employees, and any and all other persons in active concert of participation, or any of them, are hereby enjoined and restrained from selling or delivering, or offering to sell or deliver, any commodity at a price in excess of the maximum price permitted by the General Maximum Price Regulation or from otherwise directly or indirectly selling or delivering, or offering for sale or delivery, any commodity in violation of said regulation or from doing or failing, neglecting or refusing to do any other act in violation of said regulation.

This temporary restraining order will remain in full force and effect until the 11th day of December, 1942, at 10:30 o'clock A. M., or until further order of this court. Issued at

the City of Washington, District of Columbia, at 11:30 o'clock A. M. on the 8th day of December 1942.

MATHEW F. McGUIRE,
Justice, District Court of the United States for the District of Columbia.

42 [Endorsed:] Filed Dec. 10, 1942.

[Title omitted.]

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

The defendant The Hecht Company moves that the temporary restraining order entered in the above entitled cause on December 8, 1942, be dissolved forthwith. The grounds for this motion are as follows:

1. The said temporary restraining order was granted without notice to the Hecht Company, the adverse party, although it was not shown that immediate and irreparable injury, loss, or damage would result to the applicant before notice could be served and a hearing had thereon, as required by Rule 65 (b) of the Rules of Civil Procedure. On the contrary, it would have been a very simple matter to have had a hearing, since the facts upon which the complaint and motion for a temporary restraining order are sought to be based have been known to the plaintiff since at least mid-October. Indeed, counsel for the plaintiff had been in negotiation with counsel for the defendant for some days prior to the filing of the suit.

2. Said temporary restraining order is not specific in terms as required by Rule 65 (d) of the Rules of Civil Procedure.

43 3. Said temporary restraining order does not describe in reasonable detail (and not by reference to the complaint or other document) the act or acts sought to be restrained as required by Rule 65 (d) of the Rules of Civil Procedure.

4. The order is too broad in restraining all violations of the general Maximum Price Regulation upon an *ex parte* indication of violation of some requirements of the Regulation.

5. The defendant has made every possible effort to comply with the Emergency Price Control Act of 1942 and with the regulations issued thereunder and to correct any errors which it may have made, and will continue to make every possible effort to comply with said statute and regulations and to correct any errors. A temporary restraining order is unnecessary and

improper under those circumstances when there has been every possible effort to comply and a substantial compliance with the purposes of the statute and Regulation.

The affidavit of Charles B. Dulcan, Sr., in support of this motion is filed herewith and made a part hereof.

CHARLES A. HORSKY,
Charles H. Horsky,

SPENCER GORDON,
Spencer Gordon,

Union Trust Building, Washington, D. C.,
Attorneys for Defendant, The Hecht Company.

COVINGTON BURLING, RUBLEE, ACHESON & SHORB,
Union Trust Building, Washington, D. C.

Received this day a copy of the foregoing motion to dissolve temporary restraining order, points and authorities, and supporting affidavit. December 9, 1942.

DAVID GINSBURG,
General Counsel, OPA.
By FLEMING JAMES, Jr.,

44

AFFIDAVIT

DISTRICT OF COLUMBIA:

Charles B. Dulcan, Sr., being first duly sworn, deposes and says:

1. That he is Vice President in charge of the Washington store of the Hecht Company, defendant in the action entitled *Leon Henderson, Administrator* v. *The Hecht Company*, Civil Action No. 71995, now pending in the United States District Court for the District of Columbia.

2. That to his knowledge the defendant, Hecht Company, has made every effort possible to comply with the regulations issued by the Office of Price Administration, and that it will continue in the future with every resource available to it to attempt to comply with these regulations.

3. That it has never in the past and does not now and will not in the future countenance any attempt by any member of its organization to evade or avoid any requirement of any regulation of the Office of Price Administration, or for that matter of any other government organization.

CHARLES B. DULCAN,
Charles B. Dulcan.

Sworn to before me this 9th day of December 1942.

ROSCOE W. REICHARD,
Notary Public.

47 [Endorsed:] Filed: Dec. 16, 1942.
[Title omitted.]

MOTION TO ADVANCE CASE FOR TRIAL

The plaintiff, Leon Henderson, Administrator, Office of Price Administration, moves that the above entitled cause be advanced for a trial on the merits, that is, on the question of the issuance of a permanent injunction against the defendant, and set for January 5, 1942, or as soon thereafter as is convenient to the Court, and that the arguments on the application by the plaintiff for a preliminary injunction and on the application of the defendant to dissolve the temporary restraining order be heard at the same time as the trial, and that the temporary restraining order remain in effect until that time. The grounds for this motion are as follows:

(1) The case involves a question of great public importance with respect to the administration of the Emergency Price Control Act of 1942. It is highly desirable in the administration of that Act and in the entire effort by the plaintiff Administrator to prevent disastrous inflation that the case be finally decided as soon as possible.

(2) The evidence on the trail of the cause will be to a very large extent the same evidence as would be produced with respect to the application for a preliminary injunction. It would, therefore, be a saving of the time not only of the parties but of the Court as well if the entire controversy can be heard at one time.

48 (3) Counsel for the defendant, the Hecht Company, will agree to postpone the argument on the motion for a preliminary injunction and the argument on the motion to dissolve the temporary restraining order as herein contemplated if the case can be advanced for an early trial.

DAVID GINSBURG,
David Ginsburg,
General Counsel, Office of Price Administration,

BRUNSON MACCHESNEY,
Brunson MacChesney,
Assistant General Counsel,

FLEMING JAMES, JR.,
Fleming James, Jr.,
Chief, Trial Litigation Branch,

GEORGE M. AUSTIN,
George M. Austin,
Trial Litigation Attorney,

HAROLD SWOPE,
Harold Swope,
District Attorney, District of Columbia,
Attorneys for Office of Price Administration.

STATEMENT BY DEFENDANT THE HECHT COMPANY

Received this day a copy of the foregoing motion to advance the cause for trial. The statements contained in paragraph 3 thereof with respect to the position of the defendant, the Hecht Company, are in all respects accurate. We consent to the immediate submission of the foregoing motion, and respectfully request that said motion be granted.

CHARLES A. HORSKY,
Charles A. Horsky,
SPENCER GORDON,
Spencer Gordon,
Attorneys for The Hecht Company.

49 [Endorsed:] Filed Dec. 16, 1942.
[Title omitted.]

ORDER ADVANCING CASE FOR TRIAL

Upon consideration of the motion of the plaintiff filed herein and the statement of the defendant endorsed thereon, it is by the Court this 16th day of December 1942,

Ordered that the above entitled cause be, and it is hereby, advanced for trial on the merits and set for trial on January 4, 1942, or as soon thereafter as it may be heard. And it is further

Ordered that hearing upon the motion of the plaintiff for a preliminary injunction and upon the motion of the defendant to dissolve the temporary restraining order, heretofore entered in said cause, be, and the same are hereby, postponed until the trial of the case on the merits, the said temporary restraining order to remain in effect until that time.

MATHEW F. MCGUIRE,
Justice.

50 [Endorsed:] Filed Dec. 28, 1942.
[Title omitted.]

ANSWER OF DEFENDANT THE HECHT COMPANY

First Defense

1. The defendant admits that the Price Administrator has brought this action. The defendant denies that it has violated the General Maximum Price Regulation, as amended, or any other regulation. The defendant has no knowledge or information sufficient to form a belief as to the truth of the other averments of Paragraph One of the Complaint.

2. The defendant admits that this Court has jurisdiction under Section 205 (e) of the Emergency Price Control Act of 1942.

3. The defendant admits that it is and that at all times mentioned in the complaint it has been engaged in the sale and delivery of commodities in the retail mercantile business within the District of Columbia.

4. The defendant admits that the Price Administrator published in the Federal Register the General Maximum Price Regulation effective May 11, 1942 (7 F. R. 3153), pursuant to the provisions of Section 2 of the Emergency Price Control Act of 1942. The defendant states that the price Administrator has also published in the Federal Register since May
51 11, 1942, many amendments, to the General Maximum Price Regulation, and has also published many other Maximum Price Regulations relating to specific commodities and classes of commodities and applicable to goods sold by the defendant, and has published many successive amendments to these Maximum Price Regulations.

5. The defendant admits that the General Maximum Price Regulation provides in part substantially as set forth in Paragraph 5 of the complaint, but denies that these are the only provisions of said regulation which are material. The defendant refers to said regulation (7 F. R. 3153), for more complete and definite statement of its terms.

6. The defendant denies all averments of Paragraph 6 of the complaint.

Second Defense

As a second defense the defendant refers to Paragraph 1 to 5, inclusive, of the first defense contained in this answer, and, without repeating the same, incorporates them as a part of this defense.

6. Defendant denies that it has ever refused to comply with any regulation issued by the plaintiff. Defendant sells over 200,000 different articles in its store, each one of which must be priced pursuant to the regulations issued by the plaintiff as Price Administrator. There are more than twenty-five different regulations which are applicable to articles sold in defendant's store, in addition to the General Maximum Price Regulation, violation of which plaintiff seeks to enjoin. General Maximum Price Regulation alone has been amended more than thirty-five times, and there have been very many amendments of the other regulations. The defendant has made earnest and sincere efforts to comply with all regulations issued by the plaintiff, and has gone to great expense in making such efforts. If the defendant has failed or neglected to comply with any regulation issued by the plaintiff which the defendant does not admit, such failure or neglect has been wholly involuntary, has been corrected as soon as discovered, and has been so inconsequential and unsubstantial compared with the substantial compliance by the defendant that it does not constitute a basis for the issuance of an injunction against the defendant.

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THIRD DEFENSE

As a third defense, the defendant refers to Paragraphs 1 to 5, inclusive, of the first defense contained in this answer, and, without repeating the same, incorporates them as a part of this defense.

6. Defendant denies that it has ever refused to comply with any regulation issued by the plaintiff. The defendant has made, and is making, every possible effort to comply with all such regulations, and has gone to great expense in its efforts to do so. The issue of an injunction against the defendant would be a great and irreparable injury to its reputation, and would be of no benefit to the plaintiff, or to any customers of the store, or to any other person or persons. It would be impossible for the defendant to comply with an injunction to any greater extent than it is complying with the regulations issued by the plaintiff.

CHARLES A. HORSKY,
Charles A. Horsky,
SPENCER GORDON,
Spencer Gordon,
Union Trust Building, Washington, D. C.—
Attorneys for defendant, The Hecht Company.

COVINGTON, BURLING, RUBLEE, ACHESON & SHORB,
Union Trust Building, Washington, D. C.
53 December 28, 1942.
Received a copy of the foregoing answer.

DAVID GINSBURG,
General Counsel, OPA.

By FLEMING JAMES, JR.
GEORGE M. AUSTIN.
CHAS. PRETTYMAN.

54 [Endorsed:] Filed Jan. 6, 1943.
[Title omitted.]

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE

This is an action by Leon Henderson, the Price Administrator against the Hecht Company.

The plaintiff alleges that the defendant has failed, neglected and refused to comply with General Maximum Price Regulation issued pursuant to the Act in certain ways set forth in the Complaint, and the plaintiff asks for a temporary restraining order, a preliminary injunction, and a final injunction.

There is no issue as to the constitutionality of the Act, or the validity of the Regulation, or the jurisdiction of the Court.

The defendant's position is that it has never refused to comply with it, has been guilty of no negligence, and that any failure to comply has been involuntary, has been corrected as soon as discovered, has been inconsequential and unsubstantial compared with the substantial compliance by the defendant, and does not constitute a basis for the issuance of an injunction. The defendant also contends that the issuance of an injunction would cause it irreparable injury and would be of no benefit to the plaintiff or any other person, and that it would be impossible to comply with an injunction to any greater extent that the defendant is already complying with the plaintiff's Regulation.

In this case a temporary restraining order was granted without hearing and the defendants have moved to dissolve the temporary restraining order. The plaintiff has filed a motion for a preliminary injunction. There has been no hearing on either of these motions. The case has been advanced for trial on the merits, and it is contemplated that the evidence which will be introduced on both sides on the merits will also be the

evidence in support of the plaintiff's motion for a preliminary injunction and the defendant's motion to dissolve the temporary restraining order. Subject to any direction by the Trial Justice, it is contemplated that there will be no argument on either of these motions until the testimony is completed on both sides and the final arguments are made on the merits. The purpose of this stipulation is to prevent duplication of testimony and to conserve the time of this Court.

STIPULATIONS

By agreement of counsel for the respective parties, present in Court, it is ordered that the subsequent course of this action shall be governed by the following stipulations unless modified by the Court to prevent manifest injustice:

The various papers which are included in the seven folders which have been supplied to the defendant by the plaintiff and are marked "A" to "G" inclusive, constitute a specification of all the alleged violations of the General Maximum Price Regulation by the defendant which the plaintiff will attempt to establish by proof, except the claim as to the violations of the posting requirements of said Regulation by the defendant; as to which plaintiff will adduce oral testimony. A specification of the plaintiff's claim on Thursday, January 7, 1943. Nothing in this stipulation shall be understood to limit or restrict in any way the right of the plaintiff to call witnesses to explain any material in said folders, the courses of the contents thereof, the manner in which said sheets and tables were prepared and the purpose of each, including the individual items therein.

It is agreed that the sheets and tables, initialed by counsel, marked 1 to 41 and retained by the plaintiff may be offered in evidence upon their explanation by oral testimony of the person under whose charge they were prepared with the same effect as though a witness had testified orally from his own recollection as to the contents and manner of preparation of the sheets and tables; but all parts of said sheets and tables shall be subject to any objection which may be made as to materiality or relevancy, and there is no admission as to
55 the correctness of the sheets and tables or any of the items thereon, and the defendant reserves the right to refute all or any part thereof, and the persons who assembled the data for any sheet or table must, if the defendant requests, be produced for cross-examination if the sheet or table is used.

Counsel on both sides request that the Assignment Com-

missioner be instructed not to set the case for trial before Monday, January 11, 1943.

DAVID A. PINE,
Pretrial Justice.

Dated January 6, 1943.

Remarks of Pretrial Justice for consideration of Trial Justice:

Attorneys authorized to act: Fleming James, Jr., Plaintiff; Spencer Gordon, Defendant.

[56] [Endorsed:] Filed January 20, 1943.
[Title omitted.]

MOTION TO SUBSTITUTE

SUGGESTION OF RESIGNATION OF LEON HENDERSON, AND MOTION FOR LEAVE TO SUBSTITUTE PRENTISS M. BROWN, SUCCESSOR TO PLAINTIFF LEON HENDERSON

Prentiss M. Brown by his counsel, respectfully suggests to the court that Leon Henderson, plaintiff, has resigned from the office of Administrator of the Office of Price Administration, effective January 20. His resignation was duly accepted and said Prentiss M. Brown entered upon the duties of said office on January 20 and is now lawfully acting as Administrator of the Office of Price Administration. There is substantial need of continuing and maintaining this cause by him as successor in office to Leon Henderson as Administrator of the Office of Price Administration for the reason that this action relates to the present and future discharge of the office of Administrator of the Office of Price Administration and is important in the administration and enforcement of the Emergency Price Control Act.

Wherefore, Prentiss M. Brown, as Administrator of the Office of Price Administration, under authority of Rule 25 (d) of the Federal Rules of Civil Procedure moves for leave to be substituted as plaintiff in the place and stead of Leon Henderson.

DAVID GINSBURG,
David Ginsburg,
General Counsel.

BRUNSON MACCHESNEY,
Brunson MacChesney,
Assistant General Counsel.

FLEMING JAMES, JR.,
Fleming James, Jr.,
Chief, Trial Litigation Branch.

[57] [Endorsed:] Filed Jan. 20, 1943.
[Title omitted.]

ORDER FOR SUBSTITUTION

Upon motion of Prentiss M. Brown it has been made to appear to the court that

(1) Leon Henderson, plaintiff in this action, has resigned from the office of Administrator of the Office of Price Administration, effective January 20;

(2) His resignation was duly accepted and said Prentiss M. Brown entered upon the duties of said office on January 20 and is lawfully acting as Administrator of the Office of Price Administration;

(3) There is substantial need of continuing and maintaining this cause by him as successor in office to Leon Henderson as Administrator of the Office of Price Administration for the reason that this action relates to the present and future discharge of the office of Administrator of the Office of Price Administration and is important in the administration and enforcement of the Emergency Price Control Act.

Wherefore it is ordered that Prentiss M. Brown, as Administrator of the Office of Price Administration, be, and is, hereby substituted as plaintiff in the place and stead of Leon Henderson.

F. DICKENSON LETTS, *Justice.*

97 CHARLES B. DULCAN, Sr., a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

98 Direct examination by Mr. AUSTIN:

Q. Your name is Charles Dulcan, Sr., is it not?—A. Yes, sir.

Q. And you are a Vice President of the Hecht Company, are you not?—A. Yes, sir.

Q. And also General Manager of the Washington store?—A. That is right.

Q. And you have held this position as Vice President and General Manager for some time?—A. Yes, sir.

Q. As such General Manager, you are responsible for the general supervision of the store, are you not?—A. That is right.

Q. Including the merchandising procedure?—A. I would say I was not directly in charge of merchandising because we have a general merchandise manager. I, however, was his chief.

Q. You have supervision over the general merchandise managers, have you not?—A. Yes, sir.

Q. Now the Hecht Company—and in speaking of the Hecht Company, I am referring solely to the Washington
99 store—set up a price control office some time in the early part of 1942, did you not?—A. Yes, sir.

Q. The purpose being to enable the store to comply with the regulations of the OPA?—A. That is right.

Q. And a Mr. Robert Levi was put in charge of that department or office originally, was he not?—A. Yes, sir.

Q. And he continued in charge until about the first of July 1942?—A. I do not recall the date, but it was approximately that.

Q. Approximately thereabouts. And since that time Mr. Louis Etelson has been in charge of that office and is presently in charge of it?—A. Yes, sir.

Q. And was in charge of it—has been since October 1st?—A. That is right.

Q. All that time. Now you are familiar, are you not, Mr. Dulcan, with the fact that the investigators of the Office of Price Administration made an investigation in the Hecht Company?—A. Yes, sir.
100 Q. And that was for some period following—on or about October 1st?—A. Yes, sir.

Q. And you were advised that the nature of this investigation was to determine whether or not the Hecht Company was complying with the OPA regulations with respect to the General Maximum Price Regulation?—A. When you say I was advised—will you clear that up a little bit, please? I was advised by whom?

Q. I just asked you if you were advised.—A. I was advised that the nature——

Q. Of the investigation?—A. Was for the purpose of ascertaining whether or not we were complying.

Q. With the OPA, yes.—A. I understand it; yes.

Q. And you talked with Mr. Etelson about this investigation, did you not?—A. Yes, sir.

Q. And you talked with some of the investigators at a time or two, did you not?—A. Yes; for very brief moments.

Q. And did you talk with the managers of the various
101 departments about it?—A. Several.

Q. And you did, did you not, Mr. Dulcan, advise——

Mr. DULCAN (interrupting). May I say that I talked to the group many times. I talked to the individuals at times.

Q. All right. But you advised Mr. Etelson, did you not, Mr. Dulcan, to give the OPA investigators cooperation?—A. Yes, sir.

Q. And any help and assistance that he could?—A. Yes, sir.

Q. And to make accessible to them the records of the store?—A. That is right.

Q. And to advise the buyers to do the same thing?—A. By all means.

Q. And to answer the questions of the OPA investigators?—A. That is right.

Q. And otherwise do whatever was requested of them, reasonably, by the investigators?—A. That is right.

Q. Now Mr. Levi and Mr. Etelson, were both in charge of the price control office—given authority to set up the necessary checks to insure compliance with the OPA regulations,
102 were they not?—A. Yes, sir.

Q. Now, then, Mr. Ben Rose is the buyer in the Students' Clothing Department, is he not?—A. Students' and Boys' Clothing Department.

Q. And Miss Rothenberg?—A. She is the buyer of the Women's Hosiery Department.

Q. Mr. Jack Rosenberg in the Women's Shoe Department?—A. Yes, sir. Do you wish me to make a distinction? There is another shoe department.

Q. Department 55?—A. Department 55.

Q. And Mr. Crone is the buyer in department 59?—A. That is right.

Q. And Mr. Levinson in department 60?—A. That is right.

Q. And Mr. Singer in department 69?—A. That is right.

Q. And Mr. Weiner in department 76?—A. That is right.

Q. Now it is further a fact, is it not, Mr. Dulcan, that the Hecht people placed in these people with respect to their departments the primary responsibility of complying
103 with the regulations of the OPA, did they not?—A. I would say that that is correct, yes.

Q. And the function of Mr. Etelson and Mr. Levi was to see to it that the buyers did comply—see to it that their departments did comply?—A. Well, you see, I can say yes and no.

Mr. AUSTIN. Just a minute.

Mr. DULCAN. In this business there are many involvements.

Mr. AUSTIN. Will you answer it yes or no.

Mr. GORDON. He said he could not answer it both ways.

The COURT. You may answer.

Mr. AUSTIN. Read the question.

(The reporter read the question.)

A. My answer is that the problem had to be placed in the hands of the buyers.

Q. Now, then, the function of Mr. Etelson and Mr. Levi—they being in charge of price, or the price control office—was to check on these buyers, was it not, and others, and see to it that there was compliance?—A. The functions were broader than that. They attempted to interpret the regulations to our people and sent them notices with these interpretations.

104 Q. Yes.—A. They were then, of course, to help them in compliance as far as it was within their power.

Q. All right. Now, Mr. Dulcan, it is a fact, is it not, that those buyers in the Hecht Company work on an incentive compensation basis?—A. Yes, sir.

Mr. AUSTIN. That is all, I believe.

Mr. HORSKY. Your Honor, Mr. Dulcan will be a witness for us later on. I have no specific questions to ask at this time.

Mr. GORDON. Of course, we don't want to go into our case on cross examination here, you understand.

The COURT. Yes.

Mr. JAMES. Mr. Etelson?

L. G. ETELSON, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. AUSTIN:

Q. Will you tell us your name, please?—A. Louis

105 Etelson.

Q. And by whom are you employed, Mr. Etelson?—A. The Hecht Company.

Q. And I believe you are in charge of the price control office at the present time?—A. Yes, sir.

Q. And your predecessor was Mr. Robert Levi?—A. That is right.

Q. And you have had charge of that office since approximately July 1st, 1942?—A. About—a little earlier than that. I think it was about the middle of June.

Q. Have you been apprised of the investigation of the Hecht Company by the OPA representatives?—A. Yes, sir.

Q. When did you first have knowledge of the investigation, Mr. Etelson?—A. It was the day I returned from my vacation. I believe it was about the last Monday in September—some time around September 28th. I do not remember the exact date.

Q. And did you meet the investigators?—A. I met Mr. Fath, Mr. Welsh and Miss Mack that first morning.

Q. And whom did you meet subsequently?—A. After
106 that I met Mrs. Snelling, Mr. Kaplan, Mr. Yeager, a Mr. Martin, another gentleman, Mr. Van Brunt, Mr. Singer, a young colored lady—I believe she was the stenographer, and several other people whom I don't recall at the moment.

Q. And with whom did you confer with respect to this investigation among the investigators?—A. Well, I don't know what you mean by "confer." I spoke with several of them. I would say I spoke mainly with Mr. Fath, Mr. Kaplan and Mr. Webb. I talked quite a bit with Mrs. Snelling and I probably talked with some of the others.

Q. And did you talk with Mr. Dulcan about the investigation?—A. Oh, sure, at various periods during the course of the investigation; yes, sir.

Q. And did you have occasion to confer with the buyers of the various departments?—A. In the presence of the investigators, yes.

Q. What was the nature of your talks with the buyers and merchandise men about the investigation in the presence of the investigators?—A. In helping the investigators get the information they want.

Q. And you gave the buyers authority to give the in-
107 vestigators the help that they wanted?—A. Yes, sure; they have always given the instructions to our people.

Q. And access to the books and records that they desired?—A. That is right.

Q. And to answer their questions?—A. That is right.

Q. And what did you do as a general thing during the course of the investigation or with respect to the investigation, Mr. Etelson?—A. What did I do?

Q. Yes.—A. As a general thing with respect to the investigation?

Q. That is right.—A. Just try to help the investigators—cooperate with them—keep them posted on what they wanted and what help they wanted—get the buyers for them.

Q. You kept track of what they were doing?—A. As much as possible. They did a lot of things outside of my presence or in my presence to which I paid no attention. They had free reign to do as they pleased.

Q. Now, Mr. Etelson, I will hand you what has been identified as Plaintiff's Exhibit 1-A and ask you what that
108 purports to be?—A. This is a white copy or a white copy of a set of confirmation blanks.

Q. I take it that is the original?—A. That is right.

Q. And will you state and describe what information is filled in by the store, or the agent of the store with respect to the

confirmation in those various columns?—A. There is filled in here [illustrating] the department number for which the merchandise is being purchased, the date on which the confirmation is written, the date on which the merchandise is to be shipped, the shipping instructions, f. o. b., and term information and dating credit information.

Then there is a space on here for the name and address of the vendor, a column on here for the style number of the merchandise, a column for the description of the merchandise, a column headed "color," and then twelve other items which have no heading on them, and then there is a column headed "Quantity," a column headed "Price" and a column headed "Total." Then there is a stub on here which has some information.

The COURT. Is that the Hecht form?

The WITNESS. Yes, sir.

Q. Now in which of these columns is information entered on this sheet when an order is made or a purchase made?—A. Will you repeat that please?

109 Mr. AUSTIN. Will you, please?

(The reporter reads the last question.)

A. Well, I would say that the columns which are always filled in are the Quantity column, the Unit Price column and the Total column. The other columns may be filled in as columns, or there may be some general writing across the confirmation, all depending on the type of merchandise and how it is bought. The Style or Description column may be filled in as such, or not.

Q. Now, then, Mr. Etelson, will you tell the Court what the ultimate disposition of that white original is?—A. This white original is sent to the vendor.

Q. In other words, that does not ever come back to the Hecht Company?—A. No, it is a confirmation of the order to the vendor.

Q. Now I hand you——

A. (Interposing) And without this stub, by the way.

Q. Yes. I hand you what has been marked Plaintiff's Exhibit 1-B and ask you to tell what that purports to be?—A. This is a duplicate of this white copy which is known as our invoice office copy of the confirmation.

Q. And what is the ultimate disposition of that sheet,

110 Mr. Etelson?—A. This finally ends up in the closed files of our invoice office.

Q. Now are the entries on on this yellow carbon, with respect to any particular order, the same as are made on the white original?—A. There is additional information added.

Q. What is the additional information?—A. This will show

the unit retail which has been set on the goods and at which price the goods are to be marked.

Q. Now will you further explain to the Court what you mean by "unit retail"?—A. The unit retail is the selling price of the piece of merchandise—the selling price at which the merchandise is to be marked.

Q. And where did you say this colored sheet finally was deposited?—A. In the closed files of the invoice office.

Q. I see. Now, then, I hand you what has been marked Plaintiff's Exhibit 1-C and ask you what that purports to be?—A. This is another copy or a triplicate copy of the same confirmation form.

Q. Now, then, what is the ultimate disposition of
111 that pink copy?—A. This is the buyer's copy which the buyer keeps for her own record purposes or for her own or his own information.

Q. And does that—does the information which should appear on that sheet as a result of an order—differ in any respect from the information that will appear on the yellow carbon?—A. No, but they have information that the buyer may add for her own record or for her own information.

Q. Now does this pink or buyer's copy or carbon contain the retail price—unit retail price as appears on the yellow carbon?—A. Yes, sir; I believe it does, in most cases.

Q. In that respect it differs from the original white?—A. That is right. It has to be on the original white, but the retail price is not set out. It is on the stub and the stub is torn off.

Q. Now I hand you what has been marked Plaintiff's Exhibit 1-D and ask you what that purports to be?—A. Well, this is the fourth copy, and I don't believe this has any value at all and has been eliminated from our new confirmation books. It has no real value at all.

Q. You mean presently you do not even have that
112 fourth copy—that fourth carbon?—A. That is right, and although it has been in the old books, I do not believe it has any value.

Q. What was the ultimate disposition of that blue carbon?—A. Frankly, I don't know.

Q. And you say you do not know what use it has, if any?—A. That is right. So far as I know now, it has had no use for some time.

Mr. AUSTIN. At this time, if the Court please, we offer into evidence Plaintiff's Exhibits 1-A through 1-D.

Mr. HORSKY. I have no objection.

The COURT. Let them be received in evidence.

(The forms previously marked "Plaintiff's Exhibits. No 1-A, 1-B, 1-C and 1-D" were received in evidence.)

Mr. AUSTIN. I might say, if the Court please, that these exhibits have been marked and agreed upon by Counsel in the stipulation of the pre-trial proceedings.

By Mr. AUSTIN:

Mr. Etelson, I hand you what has been marked Plaintiff's Exhibit No. 9 and ask you what that purports to be?—A. This is a change of retail form.

Q. Now when is that used?—A. We call it a change of retail form. That is actually not the correct name of it.
113 This is used when there are to be changes made in the order after it has reached the invoice office. This is an order to the invoice office to make a change either in the date or the quantity order or the retail price of the merchandise.

Q. Now among other things, that is a method used to change the retail price, is it not?—A. Before the merchandise is marked.

Q. Before the merchandise is marked?—A. That is right.

Q. Yes, and it is not used after the merchandise has once been marked?—A. That is right.

Q. Mr. Etelson, I hand you Plaintiff's Exhibit 10 and ask you what that purports to be?—A. This is one copy of a mark-up form.

Q. And when is that used?—A. This is used—and it is made out in duplicate form—this is used when the retail price of merchandise which has already been marked is to be changed upward.

Q. And that original is in a book, is it not?—A. A book; yes, sir.

Q. And you say there is one other copy? Is that the tissue you are referring to?—A. No. I think this is the copy
114 that stays in the book and there is a white copy.

Q. Original white sheet?—A. Yes, sir.

Q. You say there are no tissue copies?—A. No, sir. There is a copy that stays in the book, a carbon, not a tissue.

Q. No tissue? I hand you Plaintiff's Exhibit 11 and ask you what that purports to be?—A. This is a reduction form or a mark-down which is also made out in duplicate, and this is used when the retail price of the merchandise is lower from the marked price—is changed downward.

Q. That is right. And that also is only used after the merchandise has originally been marked?—A. Yes, sir.

Mr. AUSTIN. The plaintiff at this time offers in evidence Exhibits 9, 10 and 11.

Mr. HORSKY. No objection.

The COURT. Received.

(The forms previously marked "Plaintiff's Exhibits 9, 10 and 11" were received in evidence.)

By Mr. AUSTIN:

Q. Mr. Etelson, with respect to those—with respect to the confirmation, who makes that out? Who fills in the information?—A. In most cases, the buyer. When I say the
115 buyer, I mean the department manager as against, perhaps something that may be bought by someone in the New York office for a buyer.

Q. And with respect to the change in retail form—who makes that up?—A. The buyer.

Q. And as to the mark-up and mark-down, the buyer makes that up?—A. In most cases. Sometimes it may be done by him or by the assistant buyer, or if both are away, the merchandise manager, but someone responsible for the department at the time it is made up.

Q. In other words, that is part of the written merchandising procedure of the store?—A. That is right.

Mr. AUSTIN. That is all, I believe.

Mr. HORSKY. Mr. Etelson is in the same position as Mr. Dulean. We have no further examination.

The COURT. Proceed.

Mr. AUSTIN. Mr. Kaplan, please.

LESTER KAPLAN, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

116 Direct examination by Mr. AUSTIN:

Q. State your name.—A. Lester Kaplan.

Q. Where do you live?—A. 268 Jefferson Street NW., Washington, D. C.

Q. And by whom are you employed?—A. The Office of Price Administration.

Q. In what capacity?—A. Investigator.

Q. How long have you worked for OPA?—A. Since June 1942.

Q. What was the nature of your work before you were employed by OPA?—A. I worked as an investigator for the New York City Department of Welfare.

Mr. GORDON. Department of what, sir?

The WITNESS. Welfare.

Q. How long had you been employed in that work?—A. Seven years.

Q. What has been the nature of your work with the OPA?—A. The investigation for compliance with the various OPA rules and regulations.

Q. And in the course of your employment, did you have occasion to investigate the Washington store of the
117 Hecht Company?—A. Yes.

Q. When was this?—A. From October 1st through the month of October and a few days in November.

Q. Did you conduct the investigation alone?—A. Well, I had several assistants.

Q. They worked with you regularly on the investigation?—A. A few worked regularly and a few were employed more or less in a clerical capacity—to copy down some information for us.

Q. Did you investigate all of the departments in the—store?—A. No.

Q. What departments did you investigate?—A. We investigated seven departments: 26, 47, 55, 59, 60, 69, and 76.

Q. And in your investigation, who, if any, of the executives in Hecht Company did you meet?—A. Mr. Etelson and Mr. Brown and Mr. Dulcan, Mr. Weitzberg and various buyers, if you call them executives.

Q. And what buyers did you meet?—A. Buyers? Mr. Rose in department 26 and his assistants, Mr. Gordon; Miss Rothenberg, department 47; Mr. Rosenberg, department 55;
118 the gentleman in department 69; Mr. Levinson, 69; and Mr. Weiner, 76.

Q. And in what department did you commence your investigation?—A. Department 26.

Q. What commodities—what types of commodities are sold in that department?—A. Students' and boys' clothing.

Q. And you met Mr. Rose and Mr. Gordon?—A. That is right.

Q. The buyer and assistant buyer in that department?—A. Yes.

Q. Did you discuss the proposed investigation with them?—A. Yes.

Q. Under what circumstances?—A. Originally at Mr. Etelson's office.

Q. What was the nature and extent of this discussion?—A. Well, I discussed the first day with Mr. Etelson and then with Mr. Rose the merchandising policy of the store and the department 26, specifically in order to ascertain just what records I would have to look at to find out the store's proper March and ceiling prices and what other documents I would need to be able to find out just where they kept their various records.

Q. Will you describe how you conducted the investi-
119 gation? Describe how you conducted the investigation in department 26, and if you can, in the order in which you proceeded.—A. After discussion with Mr. Etelson and Mr. Rose, I requested that Mr. Etelson secure for me the various confirmations for department 26—those that would start as far back as November 1941 through March 1942.

I also requested from Mr. Etelson the store's own base period statements, and these were given to me by Mr. Etelson.

We copied down all the confirmations which Mr. Etelson gave to me, and then took the store's base period statement, which included their cost of living commodities and supplements, and attempted to check the items which appeared on these confirmations with the store's statement.

We found, however, that the statement did not identify the various items as they appeared on the confirmations. That is, specifically, there were no style numbers on many of the items that appeared on the base period and cost-of-living statements.

I then requested Mr. Rose and his assistant, Mr. Gordon, to indicate or write in as best they remembered the style numbers for the items appearing on their statements. This was done.

When they had finished this, we made a check against the
confirmation at a lower price than on their own base
120 ing this check of all those items which appeared on the confirmation at a lower price than on their own base period and cost-of-living statements.

When this was finished, I requested the mark-up and mark-down books from Mr. Etelson. He produced these and we attempted to check the items so listed against the store's mark-ups and mark-downs.

Here again we found that the mark-ups and mark-downs were not identified by style number and would have such items as a boy's suit marked up from $22.00 to $25.00. There was no way that we could identify these items except by remembering on the base periods or confirmations.

Now here again Mr. Rose and Mr. Gordon, his assistant, were called in. We took the list of those items which appeared at a lower price on the store's confirmation and went over these items with Mr. Gordon and Mr. Rose, item by item, checking them against the mark-up books as well as the base period and cost-of-living statements.

In many cases Mr. Rose or Mr. Gordon would point out an item which appeared on the confirmation and then he would state that this item appears on the base period statement or

cost-of-living statement in a certain column. There wouldn't be a style number there and there would be no way in which we could question its identity, so these items would be
121 crossed off.

In several cases Mr. Rose or Mr. Gordon would pick up the mark-up book and show me mark-ups which they stated purported to be mark-ups during March or shortly before March for items which appeared on these statements. Here again, when they pointed this out to me, we crossed them off the schedule of items.

While this was going on—by "me" I mean myself and several assistants at various times—we had gone out on the floor and checked the base period statements and cost-of-living statements for merchandise that appeared on the selling floor of the department. This was in the nature of a spot check. Mr. Gordon, specifically, would pick out an item from stock which he believed was new merchandise and which had not appeared on the base period statement or cost-of-living statement and for which they had not set up any supplement to OPA, and he would give us a style number, the manufacturer's statement, or number on the price tag, and we would check this with his assistant against the base period and cost-of-living statements, and then we ascertained that it was not on the list. A list was made of all these items. We did this in the students' clothes, and then, at a later date, I did the same thing with Mr. Gordon in the boys' clothes in the same department.

122 At some time during this investigation we copied down the various mark-ups that the store had taken since March, 1942, and went over these items with Mr. Rose and Mr. Gordon. The items that had been marked up had appeared, according to Mr. Rose and Mr. Gordon, on the store's cost-of-living and base period statments at the mark-up price, and we asked for explanations as to whether that item had been sold or offered for sale in March at the mark-up price.

In several cases Mr. Rose and Mr. Gordon were able to identify and point out previous mark-ups of these items, and these were crossed off the list.

At a later date Mr. Etelson was given copies of the various exhibits and schedules we had copied down in that department. I went with him to his own photostat place and he had photostats made of the various exhibits which we gave him. These were photostated by the store. They were given an opportunity to check them over again.

I came in at a later date and they had several corrections

to offer. These corrections were made and initialed by Mr. Rose as being proper corrections.

In certain cases some of the items were crossed off our list since the store had found confirmations or identified mark-ups which would coincide with certain items, and then Mr. Rose submitted his statement in regard to the manner in
123 which he had operated in that department since the inception of price control. He signed that statement in my presence and that was the extent of the investigation in department 26.

Mr. GORDON. Did you say Mr. Rose submitted his statement? Did I understand that correctly?

Mr. AUSTIN. Will you read that last statement, sir?

(The reporter reads the last paragraph of the witness' statement.)

Mr. AUSTIN. Does that satisfy you all right?

Mr. GORDON. Oh, surely; I just want to be sure I heard that right.

By Mr. AUSTIN.

Q. I hand you what has been marked for identification exhibits 3–A through 3–I, and ask you what that purports to be?—A. This purports to be the store's cost-of-living statement, as well as their base period statement. This copy, or this photostat was made from our records at the War Price and Rationing Board. Mr. Etelson had the store's own copy in the store which they were using.

He advised me it was a true copy, filed at the War Price and Rationing Board, and that if we wanted a copy, it would be the same thing as the store had, so we made a copy at the War
124 Price and Rationing Board, and in looking this over, I see it contains the same number of pages and supplements that the store had submitted to me at the time I made my investigation.

Q. I notice that the third last page has the date August 10, 1942. Will you explain that and the subsequent pages?—A. These were supplements which were filed by the store after July 1st, 1942.

Mr. AUSTIN. The plaintiff offers into evidence, if the Court please, exhibits 3–A through 3–I.

The COURT. Received.

(The documents previously marked "Plaintiff's Exhibits 3–A, 3–B, 3–C, 3–D, 3–E, 3–F, 3–G, 3–H, and 3–I" for identification were received in evidence.)

By Mr. AUSTIN.

Q. I hand you what has been marked Plaintiff's Exhibits 6-A, B, and C, three pages containing typewritten material, and ask you what that purports to be.—A. This is a schedule of items which we took in the store from the third floor with the assistance of Mr. Gordon. These items did not appear on the store's base period, cost-of-living statement and supplements.

Q. Referring to the first line, will you tell the Court—describe to him the material contained therein and the
125 source of that material—the source of those figures and that information.—A. Mr. Gordon would have the student suit that was picked out as new merchandise and he would read off or tell us the name of the manufacturer. In many cases there was no manufacturer's name on the price tag in the store, and he had to rely on his knowledge in that case. In some cases there was a manufacturer's number which was noted.

This first column would be the manufacturer's name. The second column would be a description of the garment or items as it appeared on the price tag.

The third column would be the style number on the price tag. The fourth column was a date that appeared on the tag and the fifth column was the selling price on the item as it appeared on the sales tag of the item. The last column we noted down the manufacturer's number in any cases where a manufacturer's number appeared.

Q. Now, then; can you say that after making that list, you compared it with the base period statement in the store?—A. Yes. This was done—the comparison was made while the items were being copied down. At a later date I took the base period list with our original list and double checked in order to ascertain if we were able to agree.

Q. You were unable to find those items on the base
126 period statement?—A. That is true.

Q. And did that hold good so far as the cost-of-living statement was concerned?—A. Yes, sir.

Q. Now, then, I notice that these sheets are initialed and that there is a signature of Ben Rose in the lower righthand corner. Will you state what that signifies.—A. After we made these final copies, the store was given a copy of the photostat to examine it. When we came back at a later date, Mr. Rose initialed and sent them to me to signify that the items appearing in there were true.

Mr. AUSTIN. We offer this, Plaintiff's Exhibits 6-A, B, and C in evidence.

Mr. HORSKY. No objection.

The COURT. Received.

(The documents previously marked "Plaintiff's Exhibits No. 6–A, 6–B, and 6–C" were received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for identification plaintiff's exhibit 7 and ask you what that purports to be.—A. We copied down from the store's mark-up book all the mark-ups which had taken place in the department 26 since March 1942. This list was gone over in detail with Mr.
127 Rose and Mr. Gordon. We could not identify the items specifically by style number since none appeared.

With the assistance of Mr. Rose and Mr. Gordon we were able to eliminate a number of these items for which they showed me previous mark-ups.

The remaining mark-ups which they could not identify as marked up were sold previously during the month of March at the proposed retail price as scheduled here, and they were again initialed and signed by Mr. Rose after the store had made a copy of this.

Q. Now you take the first line across there and point out to the Court the information contained in those columns.—A. On the first column headed "Date" we would have some mark-up numbers like 29—2–10 and 2–11, and the date appearing on the mark-up. In the latter part of that column we had the season number, like 4–2, 4–2, etc., and also the date.

Q. What are season numbers?—A. Those are the months in which the merchandise was sold or offered for sale.

Q. Where did you get that information?—A. That information came from the mark-up slip and appeared on the mark-up slip.

The next column identifies the item by Class, as the
128 list appeared on the mark-ups.

The following column represents the quantity mark-up as it also appeared on the mark-ups.

The following column was a description of the items also appearing on the mark-up.

The next column headed "Present Retail Price" had the figures which appeared on the mark-up slips under present retail price, and the final column, the prices appearing on the proposed retail price which I understood from Mr. Gordon and Mr. Rose to represent the mark-up price of the item.

Q. Is that what Mr. Rose told you—that that is what that represented?—A. Yes.

Mr. AUSTIN. If the Court please, we offer into evidence plaintiff's exhibit 7.

Mr. HORSKY. May I ask a question in order to determine whether to object, your Honor?

The COURT. I think so.

Mr. HORSKY. Mr. Kaplan, this does not represent anything but the items which you at that time could not find had been marked up to a price in March equivalent to the suggested retail prices; is that right?

The WITNESS. Not that I could not find, but that Mr. Rose and Mr. Gordon could not find.

Mr. HORSKY. And that you could not find.

129 The WITNESS. And that I could not find.

Mr. HORSKY. Your judgment is not that there are not such, but they couldn't be found at that time.

The WITNESS. My judgment is that the store gave me all the mark-ups they had, and those were the mark-ups I understood Mr. Rose and Mr. Gordon were using.

Mr. HORSKY. But these might, on further investigation, have proved to be proper.

The WITNESS. Mr. Rose and Mr. Gordon told me that those on that list were the only mark-ups of those items which had taken place that did not take place in March, because if they had they would have had a mark-up for me which they did not have and could not identify.

These mark-ups without Mr. Rose and Mr. Gordon would mean nothing to me.

Mr. HORSKY. I am puzzled by what you expect these to represent. Suppose an item had been sold in March. Let us take this first column across. It is a proposed retail price of $16.95; present retail price, $14.88; Good. Suppose it was a mark-up after a mark-down.

The WITNESS. They checked the mark-up with the mark-down. It had not been marked down in March.

Mr. HORSKY. In other words, this is just a list of mark-ups subject to check to see whether they were proper

130 or not.

The WITNESS. Which were checked.

Mr. HORSKY. They were checked once?

The WITNESS. That is right.

Mr. HORSKY. I have no objection.

Mr. GORDON. This Mr. Gordon is the assistant buyer there.

The WITNESS. That is right.

Mr. GORDON. Not me.

The WITNESS. Yes.

Mr. GORDON. I want to make that clear. [laughter].

The COURT. They may be received.

(The document previously marked "Plaintiff's Exhibit 7" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Now I hand you plaintiff's exhibit A, B, and C, and ask you——

Mr. HORSKY (interposing). What number?

Mr. AUSTIN. Pardon me—A, B, and C.

By Mr. AUSTIN:

Q. I ask you what those sheets purport to be.—A. We copied down all of the confirmations on items which we could not identify at the same price on the store's base period and cost-
131 of-living lists. The last column shows the prices at which they appear on that list.

These items were gone over with Mr. Gordon and Rose, item by item, checked against the base period of cost-of-living lists and the mark-ups and mark-downs which they had available at that time. In many cases there was nothing to identify these on the base period and cost-of-living lists, inasmuch as no style numbers appeared on these lists. They likewise had to identify the mark-ups.

The original list contained many other items which we crossed out and left off the schedule because Mr. Rose and Mr. Gordon were able to identify either mark-ups or subsequent confirmations or items on ceiling price lists which had the same prices on the confirmation we had scheduled.

When this was all finished the store was given a copy of this photostat. They apparently had checked again because at a later date they offered several corrections to these lists which we had not objected to. They were changed and signed and initialed by Mr. Rose.

Q. And they appear here?—A. Yes.

Q. Now will you go over this exhibit with respect to the first line across and just tell the Court where the information there was obtained and what each of those captions on the re-
132 spective columns means.—A. The first column is the style number stated on the confirmation. The second column is the manufacturer's name. All these items appeared on the confirmation. The third column is a description of the item on the confirmation. The next column is the confirmation number. The following column is the class—in this instance, where the class number appeared on the confirmation. The following column is the purchase date as it appears on the confirmation. The next one is the received date. The next is the cost date and the next is the retail price from the confirmation and which Mr. Rose and Mr. Gordon and Mr. Etelson previously had informed me would be the selling price of the mer-

chandise unless a mark-up or mark-down or change in retail had taken place.

The final column is the price which appeared on the store's own base period and cost-of-living statements.

Q. Now did you check that retail price as you found it on the confirmations with mark-ups and mark-downs?—A. I did that with the assistance of Mr. Rose and Mr. Gordon.

Q. Just explain that operation to the Court.—A. Mr. Rose and Mr. Gordon had mark-ups and mark-downs available, and we went over this particular item, style No. 6835, for Schneider, we will say, which appeared at retail for $22.50.

133 Since they could identify the style number, they went through the mark-ups. There were no mark-ups. They attempted to pick out mark-ups or mark-downs which might have taken place prior to March 1942, and, then, when none could be found—in many other cases Mr. Rose had his own buyer's confirmations. That was the pink confirmation which we did not use previously. We used the yellow. He checked through his files of confirmations and tried to find out if another confirmation had been received prior to March at a higher price. When this was done and none was found; this item was put down on a list.

Q. And that same procedure was followed with respect to each of those items you have listed?—A. Yes, sir.

Mr. AUSTIN. If the Court please, we offer in evidence exhibits 8-A, B, and C.

Mr. HORSKY. No objection.

(The documents previously marked "Plaintiff's Exhibits No. 8-A, 8-B, and 8-C" were received in evidence.)

The COURT. They are received. We will suspend an hour until 1:30.

The COURT ATTENDANT. This court will recess until 1:30.

134 (At 1:30 p. m. Court was called to order with Mr. Lester Kaplan retaking the witness stand)

The COURT. Mr. Austin, you may have the witness again.

By Mr. AUSTIN:

Q. Following your investigation of Department 26, Mr. Kaplan, what did you investigate?—A. 47.

Q. And will you kindly describe to the Court your procedure in the investigation of that department?—A. I spoke to Miss Joan Rothenberg, the buyer of that department, and asked her how she had arrived at her base period, cost-of-living statements. She informed me that she had taken the various buyers' confirmations from the beginning of that year, January,

and copied down the different items which appeared on these confirmations right through March, and put these on the cost-of-living and base period statement; thereupon Mr. Etelson procured for us the confirmations of Department 47. Miss Rothenberg sat down with us, and here again identified on Department 47 the base period, cost-of-living statement the various items that appeared on the confirmations since here again the base period and cost-of-living statements did not identify many of the items by style number. We made a list of all the confirmations that were submitted to us from that department through March 1942. Then we checked this list against the base period and cost-of-living statement
135 with Miss Rothenberg's assistance and found many items for which confirmations had been received during this period which did not appear on the base period and cost-of-living statements.

A list of these items was made. Then we went down to the selling floor of that department one day, and with Miss Rothenberg's assistance checked the individual items of hosiery selling on the floor at that time. We had with us the base period and cost-of-living statements.

Here again we took a list of items which were selling on the floor at that time which did not appear on the cost-of-living or base period statements.

Miss Rothenberg was asked if she had any records to show how she had arrived at the price of this merchandise which had not been carried in March. She thereupon told us that she had kept no written records of any comparisons; but she had in her own mind compared the new items with what she had sold before.

At this same time we took a list of several items which were selling on the floor at prices higher than prices appearing on their own cost-of-living and base period statements.

At a later date again the mark-ups of that department were checked with Miss Rothenberg, and a list was made of all those mark-ups which took place after March 1942, for which at that time Miss Rothenberg could not point out previous mark-downs or mark-ups, and which had been selling at the marked-up price.

136 Then copies of these various schedules were again photostated and by the store, I suppose, examined, because several corrections were made. They were initialled by Miss Rothenberg as being correct and signed, and Miss Rothenberg signed a statement explaining just what she had done in that department, and testifying to the various exhibits which were mentioned in her statement.

Q. Now, I hand you, Mr. Kaplan, what has been marked for identification as Plaintiff's Exhibit 38a, b, c, d, and e, and ask you what that purports to be.—A. This is the department's cost-of-living statement which was filed at the War Price and Ration Board. It also is the statement which was given to me as the store's base period and cost-of-living statement.

Q. Does that contain any supplements?—A. No.

Q. And that is a photostatic copy, is it not, of the cost-of-living statement?—A. Yes.

Q. As on file with the War Price and Ration Board here in the District?—A. Yes.

Q. And you have mentioned several times that items did not have style number identification.—A. Yes.

137 Q. Will you indicate on that list, if you can, what you learn from that statement so that the Court will fully understand it.—A. Well, there is a column on this list which said "Style Number." First there would be the article, silk hose. Then the manufacturer's number, and then there is a column for the style number which is left blank. Then there is a description, three thread, rayon top, and the price.

In the absence of the style number, we checked the confirmations for the department. The confirmations come in with the style number. Now, various types of three thread rayon hose may be purchased from one manufacturer, and without the style number on here we can't tell which hose are brought in at which price.

Mr. AUSTIN. If the Court please, we offer into evidence Plaintiff's Exhibit 38 a, b, c, d, and e.

Mr. HORSKY. No objection.

The COURT. Received.

(The document, Plaintiff's Exhibit 38 a, b, c, d, and e was received in evidence.)

By Mr. AUSTIN:

Q. I hand you, Mr. Kaplan, Plaintiff's Exhibits 39a, and 39b, and ask you what those sheets purport to be.—A. At the time the check was made on the floor of this department 38 with their base period and cost-of-living list we found these items selling on the floor, but they did not appear on the base period or cost-of-living list as required.

Q. Now, how did you determine that fact?—A. Well, Miss Rothenberg was present. She identified the style and the description of the hose with the items appearing on the base period and cost of living statements. She could not identify these items on the statements.

Q. At that time you had the cost of living—or the base pe-

riod statement as given to you by Mr. Etelson for this department?—A. Yes.

Q. Now, then, I notice that those sheets are both initialed and signed. What is the significance of that, please?—A. At the time the check was made on the floor with Miss Rothenberg an original list was compiled. Then this list was checked over again, and finally typed up in this form. The store was given a copy of this list. Miss Rothenberg checked this again herself, I believe, and then initialled it as being a true copy of what we found on the floor at the date the check was made.

Mr. Austin. Plaintiff offers in evidence, if the Court please, Plaintiff's Exhibits 39a and 39b.

Mr. Horsky. No objection.

139 The Court. Received.

(The documents, Plaintiff's Exhibits 39a and 39b were received in evidence.)

By Mr. Austin.

Q. I hand you, Mr. Kaplan, what has been identified as Plaintiff's Exhibits 40a and 40b, and ask you to tell what that shows, what those two pages purport to be.—A. This list was compiled from confirmations which the store had submitted to us in January through March, 1942. Miss Rothenberg had informed us that she had copied all the confirmations from January through March in arriving at a ceiling price list, therefore we felt if we copied those confirmations, we'd have all the items that appear on the ceiling price list, and would be able to check the prices that way. It was found, however, that these items that were scheduled did not appear on her base period or cost of living statements.

Q. Do you know as a matter of fact whether all of those items—whether those items were offered or sold and delivered in March of 1942?—A. Many of these items Miss Rothenberg could identify as having been sold in March. There were dates on the confirmations which seemed to give us a pretty good idea as to when the merchandise was in the store and offered for sale.

Q. At any rate, the purpose for you using them was because they advised you how she determined and made her base
140 period statement?—A. That is right.

Q. The confirmation from January 1 through March were the sources of information?—A. That is right.

Q. Now, then will you describe in detail that exhibit and what the various figures and descriptions in the columns purport to show, and indicate the source of that information.—A. The information appearing came from the confirmations. The first column we have the date. The next column is a descrip-

tion including the manufacturer's name and description of the item. The next is a confirmation number. Then we have the price appearing on the confirmation, and then the style number which appeared on the confirmation. The last column which we have is headed listed ceiling price. It had been our intention, if possible, to check these confirmation prices with the submitted base period and cost-of-living statements. However, in too many cases the base period statements and cost-of-living statements had no style number, and it was impossible to get an accurate check of the price because of it.

Q. And, therefore, what does the fact that that last column was left blank indicate?—A. Well, these items in the first place could not be found on the base period and cost-of-living statement, and then there were items which we had schedule
141 on this exhibit when we copied it down originally which we thought we could check, but we couldn't check against a list of ceiling prices because just to identify them by manufacturer and price line—there was no style numbers on the base period statements.

The COURT. It doesn't mean that the ceiling price would have been any different from the confirmation price?

The WITNESS. On these items?

The COURT. Yes.

The WITNESS. No, it doesn't mean that. They just didn't appear on the submitted list.

The COURT. Yes.

By Mr. AUSTIN:

Q. In other words, as far as you were able to determine from these items no ceiling price had been established on them?—A. That is right.

The COURT. I understood him to mean that they hadn't been found, that he couldn't know about the ceiling price. Is that right?

The WITNESS. No; these items Miss Rothenberg and OPA could not identify on the base period statement. In other words, even without style number or with style number, if there was any, these manufacturers' items had been omitted from the statements submitted.

By Mr. AUSTIN:

142 Q. In other words, you mean to tell the Court she could not find those items on the base period statement?—A. That is right.

The COURT. That doesn't necessarily mean they weren't here, but couldn't be identified?

The WITNESS. She was the only one who could tell us if there were such statements. She said, "It isn't there. I can't find it."

The COURT. Oh, I see.

Mr. AUSTIN. Plaintiff offers in evidence Exhibits 40a and 40b.

Mr. HORSKY. No objection.

The COURT. Received.

(The documents, Plaintiff's Exhibits 40a and 40b were received in evidence.)

By Mr. AUSTIN:

Q. I will hand you, Mr. Kaplan, what has been marked for identification as Plaintiff's Exhibit 41, and ask you what that purports to be.—A. These items were copied from the mark-ups of that department. They represent items which were marked up after March 31, 1942. We checked with Miss Rothenberg originally all the mark-ups that took place in that department including any others that were marked up after this date. In some cases Miss Rothenberg was able to show
143 us previous mark-ups or mark-downs which would indicate that these items had previously been sold in March, so they were removed. The remaining items had not been marked up in March, and had been offered for sale at a later date at this marked up price. Miss Rothenberg checked this list here and initialled and signed this as being the proper copy of those mark-ups.

Q. Now, then, the figure in Column 1 represent the season number, and mark-up date, is that correct?—A. Yes.

Q. And the figures in Column 2 represent the manufacturer's number; is that right?—A. Yes.

Q. And the third column is description?—A. Manufacturer's style number.

Q. Manufacturer's style number, yes; and the third column is a description?—A. Yes.

Q. Now, then, will you tell the Court what you mean by the next column which you have headed original retail?—A. Well on the mark-up slip under original retail we have the price which the items sold for prior to mark-up, and the next column, the proposed retail, shows the marked-up price for that particular item.

Q. In other words, this original retail appears on this mark-up form, which is the form used to accomplish that, does
144 it not?—A. Yes.

Q. And so far as this exhibit is concerned, does this—do those original retail prices indicate the marked selling price

of that item?—A. They indicate the marked selling price of those items and the selling price prior to this mark-up.

Q. And how did you get that information?—A. Miss Rothenberg.

Q. Now, then, what does the term proposed retail mean in those instances?—A. The proposed retail means the marked-up price of the new item.

Q. That is the new selling price after the mark-up?—A. That is right.

Q. And the figure in the last column is the identification of the mark-up?—A. It is the mark-up.

The mark-up itself, is it not?—A. That is right.

Q. In other words, to summarize what you said, would you say this exhibit purports to show——A. Items which had been carried at one price in March and subsequently marked up to a higher price and sold at a later date at that higher price.

145 Q. Now, then, did you have occasion to check on the floor for items sold in this department to see whether they were being sold at prices higher than the ceiling price?—A. We checked with Miss Rothenberg at the time we checked to see which items were on the ceiling price list, and we found several items which were selling, and which Miss Rothenberg identified on the list for us, at higher prices on the floor than on their ceiling price list.

Q. Do you have the notes on that, on those instances?—A. This copy was made originally, and after a subsequent discussion with Miss Rothenberg, at which time several items were crossed out, she showed us proper mark-ups for those prices. The remaining three items which I have marked and circled as O. K., or rather she did, are items she stated were selling above the ceiling price list.

Q. And will you identify those commodities by manufacturers' names, style number, and description, and so forth?—A. We have a rayon Cannon hose, Style 501, described as rayon, lisle top, which appeared on the ceiling price list at 89 cents, and was selling on October 2 at the time we made the check at $1.00. Then we have the VanRaalte, Style No. 20—no, Manufacturer's No. 25, Style 41, service silk, the ceiling price was $1.35 and it was selling on the floor at $1.50. Then we have rayon, Phoenix, Style 319, service hose, ceiling price, $1.00, which was selling on the floor at $1.35.

146 Q. Did you interrogate Miss Rothenberg with respect to these items?—A. Yes, sir.

Q. About the fact they were selling apparently over the ceiling price?—A. Yes.

Q. Do you recall what she had to say about it?—A. Well, in one case I recall she definitely stated it must have been an error on her part. Another case she stated that the items had been sold in March—I think it was Van Raalte—at $1.35. Subsequently the price to her had been raised, and in April she was selling those hose at $1.65. Then when the Order came out about the General Maximum Price Regulation she had questioned Mr. Levi, who was in charge at that time, as to how she should price this item, and Mr. Levi informed her that she should price it at $1.50, sort of a compromise. Therefore, she kept it at $1.50.

Q. Did you ask or make inquiry from Miss Rothenberg as to any record she might have relative to establishing the maximum prices on new commodities?—A. Yes. At the time we secured a list of items which were selling on the floor and did not appear on the base period or cost-of-living statements. Miss Rothenberg was questioned as to how she had arrived at those prices, and as to whether or not she had any records
147 to show how she had priced those items. Miss Rothenberg stated that she hadn't kept any written records of what she did in regard to these new items, but that she had compared them to what she called comparable merchandise selling in March, and no records were available to show how she had arrived at these prices.

Q. Do you know whether or not the Hecht Company provided the buyers and Miss Rothenberg in particular with any form for making such a record?—A. The Hecht Company had a form which Mr. Etelson had showed me, and which is designated as OPA 7. This OPA 7 made provision for the buyers to fill in the new commodities and the items with which they were comparing them in order to establish the price for any new item.

Mr. AUSTIN. Plaintiff at this time offers in evidence Exhibit 41.

Mr. HORSKY. No objection.

The COURT. Received.

(The document, Plaintiff's Exhibit 41 was received in evidence.)

By Mr. AUSTIN:

Q. I will hand you what has been marked for identification as Plaintiff's Exhibit No. 4, and ask you what that purports to be.—A. Well, this is the form that the store had
148 devised for new merchandise which hadn't been sold or offered for sale in March, and which was bought by the store at a later date. I understood the buyers were

supposed to fill these out for each new item. The form provides for a comparison price, or an item which they compared the new item with as the regulations required.

Q. And is that a copy, so far as you know, of what Mr. Etelson showed you to be the store's form?—A. Yes; I believe that Mr. Etelson gave us this copy as an example of what the store had been using.

Q. He did give you that?—A. That is right.

Mr. AUSTIN. Plaintiff offers in evidence Exhibit 4.

Mr. HORSKY. No objection.

The COURT. Received.

(The document, Plaintiff's Exhibit 4 was received in evidence.)

By Mr. AUSTIN:

Q. Mr. Kaplan, did you have any reason to investigate the particular departments you did investigate rather than some other departments in the store?—A. Well, at the beginning, no. As the investigation progressed, we found that in the furniture department the records available were of such a
149 nature that we could make a much better check than on those items, so we checked the furniture department.

Q. That is along with the two that you have described?—A. That is right.

Q. And Department 55?—A. Yes.

Q. Now, then, will you describe to the court what your procedure was in the investigation conducted in Department 55?—A. Mr. Rosenberg, the buyer, was again interviewed in regard to how he decided what his base period or cost-of-living statement was, but Mr. Rosenberg had a book which he used himself. He stated that he kept in this a record of all the purchases and the dates of the merchandise to be purchased for that department.

Q. What was that merchandise generally speaking?—A. Women's shoes.

Q. Yes. All right.—A. This information was taken from his own buyer's confirmation. He stated that from the beginning of the year through March he went through this book of his and listed all the different types of shoes that were purchased during that period, and from that he arrived at his base period and cost-of-living statements. Therefore, Mr. Etelson procured for us the book and the buyer's confirmations.

We checked the confirmations with his book, and sub-
150 stantially the information recorded in this book was that which appeared on the buyer's confirmations.

We then made a list of all the merchandise which came in on confirmations from January through March, 1942 which did

not appear on the base period and cost-of-living statement which Mr. Rosenberg has submitted. This list was gone over with Mr. Rosenberg. In several cases he pointed out items which did appear on the list—I mean the base period list.

This base period list again had no style numbers. He merely listed the manufacturer's name and various price lines. Manufacturer A might have sold shoes from $8.00 to $12.00. He would have the manufacturer's name, and shoes ranging from $8.00 to $12.00. When we checked the list for this manufacturer the only items we could put down with accuracy would be a pair of shoes maybe at $6.00 or $12.00 which was not listed for this manufacturer. We could not identify the shoes by style number because there were no style numbers on the list.

At a later date we went out on the floor and checked with the base period cost-of-living statement again for items which by price, line, and manufacturer did not appear on these statements.

Copies were made of the various items, particularly rubber goods, rubbers, which had not been listed at all on these statements. We checked the mark-ups in this department, and at a later date we again went over the various exhibits with Mr. Rosenberg. He initialled them as being correct, and
151 included them in a statement which he signed and submitted to the OPA.

Q. Now, then, how extensive was your investigation in this department? Did it purport to cover every item?—A. It was impossible to check prices in that department. Items listed by price line and having no style numbers or other description that would set them apart from the various shoes sold could not be checked on the confirmations.

Q. Well, was it a complete check of every item, or just a spot check?—A. Well, I would call it in the nature of a spot check.

Q. I hand you what has been marked for identification as Plaintiff's Exhibit 25 a, b, c, d, e, and ask you what they purport to be.—A. These are copies of department 55 cost-of-living statements and supplements which were filed with the War Price and Rationing Board and which the store had on file as their base period and cost-of-living statements which were submitted to us while we investigated the department.

Q. Which of those sheets constitute the store's base period statement?—A. Pages 1 and 2.

Q. Do you see any of the items on any of those pages
152 which purport to have style numbers listed?—A. No.

Mr. AUSTIN. I offer in evidence, if the Court please, Plaintiff's Exhibit 25 a, b, c, d, and e.

Mr. HORSKY. No objection.

The COURT. Received.

(The documents, Plaintiff's Exhibits 25 a, b, c, d, and e were received in evidence.)

By Mr. AUSTIN:

Q. Now, I hand you what has been marked as Plaintiff's Exhibits 26 a, b, c, and d, and ask you what those pages purport to represent.—A. They represent items which were copied from the store's confirmations which were not listed on the base period or cost-of-living statements, and which Mr. Rosenberg informed us were sold during the month of March by the store.

Q. Now, will you describe this exhibit in detail beginning with the column captioned "Manufacturer"; and explain just what those figures and words are.—A. The first column we have the manufacturer's name. Then we have the confirmation number, which appears on the confirmation; we have the date of the Order, and received date on the confirmation, the style number, description, the cost and the retail price.

Q. Now, then, what was the procedure in determining whether or not those items, commodities, were on the
153 base period statement or otherwise?—A. We checked the statements by price line and where the Best Shoe Company did not have a shoe listed as selling at $3.95, irrespective of style numbers, since there are no style numbers appearing, apparently this shoe had not been listed, because there was no $3.95 shoe on the base period statement. All of these items were then gone over with Mr. Rosenberg. He checked them carefully in our presence with base period and cost-of-living statements, and signed them as being correct.

Q. And that exhibit then purports to show items sold in the store in March which did not appear on their base period statement or on the cost of-living statement?—A. That is true. I might add that many of these items like Best Shoe or Frederick Spier were pretty stable shoe products according to Mr. Rosenberg, and had been carried and sold by the store over a long period of time.

Q. Which would indicate that he should have known the history of the price lines and prices of those various shoes from those particular manufacturers?—A. Yes.

Mr. GORDON. I am not making any technical objections, you understand, or I wouldn't let a question like that go by, but we are just trying to get ahead.
154
The COURT. Very well.

Mr. AUSTIN. We offer in evidence, if the Court please, Plaintiff's Exhibits 26 a, b, c, and d.

Mr. HORSKY. No objection.

The COURT. Received.

(The documents, Plaintiff's Exhibit 26 a, b, c, and d were received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for identification Plaintiff's Exhibit 27. Will you describe that exhibit and tell what it purports to show?—A. These items, rubber arctics and rubber boots, were on sale in the store on October 5, the date we checked. They did not appear on the base period and cost-of-living statement or supplements.

Q. And how did you determine that?—A. Well, there were no rubber goods or rubber arctics or rubber boots listed on any statement in the store. Mr. Rosenberg informed us that he had just forgotten to list rubber goods.

Q. And what is the source of the information occurring on that sheet?—A. The information was taken from the merchandise on the floor, the style, style number, the price and the description of the item on the floor.

155 Q. And you made a list of those, did you?—A. Yes.

Q. And compared that with the base period statements?—A. Yes.

Mr. AUSTIN. I offer into evidence, if the Court please, Plaintiff's Exhibit 27.

Mr. HORSKY. No objection.

The COURT. Received.

(The document, Plaintiff's Exhibit 27, was received in evidence.)

By Mr. AUSTIN:

Q. I hand you Plaintiff's Exhibit 28 and ask you what that purports to be.—A. In checking the confirmations which had been received by the store we made a separate list of all the rubber goods which had been received by the store prior to March 1942, and sort of a double-check on the merchandise we found on the floor selling at that time to indicate that it had been customary and the store had received rubbers and rubber goods right through that period.

Q. Now, will you explain in detail the various descriptions and numbers by column across that sheet?—A. We have the manufacturer's name, the confirmation number, the date of the order and the received date, the style numbers, the description of the merchandise, the cost and the retail price of the

158 merchandise. This again was initialled and signed by Mr. Rosenberg.

Q. And that list was checked against the base period and cost-of-living statement?—A. Yes.

Q. And you were unable to find any of those items on either of those statements?—A. Yes; no rubber goods or merchandise was listed there.

Mr. AUSTIN. Plaintiff offers in evidence Exhibit 28.

Mr. HORSKY. No objection.

The COURT. Received.

(The document "Plaintiff's Exhibit No. 28" was received in evidence.)

By Mr. AUSTIN:

Q. I hand you Plaintiff's Exhibit 29 and ask you what that purports to be.—A. We made a check on the floor of this department, and again found this was the list of merchandise which was selling on the floor, and which according to manufacturer's number and price line did not appear on the store's submitted base period and cost of living statements and supplements.

Q. What do you mean when you say it didn't appear by price line?—A. Well, it is impossible in this department to check accurately each particular item since there are no style number identifications on the cost of living and base period list. However, they do have price lines for the various manufacturers. The manufacturer was listed as selling a particular item between $5.00 and $10.00, such as $5.00, $7.00, $8.00, $9.00, and $10.00. If we found an item on the floor from that manufacturer selling at any one of those prices, we did not include it on the list, but if we found one selling at $11.00 or at $4.00, we included it on the list as being an item which wasn't included even by price.

Mr. AUSTIN. We offer Plaintiff's Exhibit 29.

Mr. HORSKY. No objection.

The COURT. Received.

(The document "Plaintiff's Exhibit 29" was received in evidence.)

* * *

3158 Q. I don't know whether you answered this or not, Mr. Kaplan. What is the source of information contained on Plaintiff's Exhibit 29?—A. Is that the last one?

Q. Yes; it is this white sheet.—A. This list was taken at the time we made the check on the floor of the department.

Q. In other words, this constitutes items that were actually on sale?—A. At that date; yes, sir.

Q. On October 5, 1942?—A. Correct.

Q. Did you make a check of all the items that were on sale in the department?—A. No.

Q. How would you characterize the check that you did make?—A. A spot check.

Mr. AUSTIN. That is all.

(The witness was excused.)

Mr. AUSTIN. At this time, if the Court please, plaintiff has not determined as to whether or not we will recall this witness in our case, but we wish to call another witness in the plaintiff's case. If the defendant is reserving the right to call this witness on cross-examination we will have him available.

I will call Mr. John Fath.

JOHN A. FATH, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. AUSTIN.

Q. Will you state your name, please?—A. John A. Fath.

Q. Where do you live?—A. Millville, New Jersey. At the Continental Hotel in Washington.

Mr. HORSKY. Will you speak louder, please?

The WITNESS. Yes, sir.

By Mr. AUSTIN:

Q. By whom are you employed?—A. Office of Price Administration.

Q. What is your title?—A. Business Specialist. I am in the Office of the Administrator, Industry Counsel Section.

Q. How long have you been with OPA?—A. February 17 1942.

Q. And before that time what was your occupation?—A. Department store owner.

Q. In Millville?—A. Millville, New Jersey.

Q. Now then, Mr. Fath, have you had occasion to investigate the Hecht Department Store?—A. Yes.

Q. And what was the nature of your investigation?—A. Back in last September, around the 15th, I started an investigation in reference to compliance in the City of Washington rather, in the District. And about September 22nd or 23rd I entered the Hecht establishment at about 4:30 in the afternoon at which time I looked over the posting on the first floor.

Q. What did you find?—A. On the first floor I found postings in the various departments. Take, for instance, in the white shirt department, there were postings at one point on about an 80-foot display of white shirts, which was posted near the door.

Q. Any others?—A. In the hosiery section, which takes in a

horseshoe section in the men's furnishing department, which is approximately 100 or more feet of show case and shelving, there appeared to be no evidence of any posting.

Q. Now then, what did you do? Did you do anything
161 further that afternoon?—A. That afternoon I contacted the assistant buyer in the men's furnishing department, asking him who was in charge of the price control of the store, and he referred me to the fifth floor, where was located the price control office of the store.

Q. Did he refer you to any person?—A. I entered the office and I met a young lady by the name of Miss Shallomey who advised me that Mr. Etelson was in charge of price control of the store, saying that Mr. Etelson was on a vacation, and she referred me to Mr. Weitzberg, the Assistant Comptroller of the store.

Q. And you contacted Mr. Weitzberg?—A. I did.

Q. Just relate what occurred, what you did and saw.—A. After a conference with Mr. Weitzberg I suggested that Mr. Weitzberg make a tour of the store with me in order to observe the posting in the store, which he did.

Q. And where in the store did you and Mr. Weitzberg go?—A. To the first floor.

Q. And what was done? What did you see and what did you do?

The WITNESS. Your Honor, may I refer to some notes?

The COURT. Is there any objection?

Mr. HORSKY. No objection at all.

162 By Mr. AUSTIN:

Q. Proceed.—A. On the first floor with Mr. Weitzberg I pointed out to him a section which takes in approximately 50 feet of space displaying white shirts. There was only one posting of ceiling prices. In the men's fancy shirt section no ceiling prices were displayed whatsoever. In the military shirt section, no ceiling prices were displayed. On three aisle tables of men's woven fabric shirts priced at $1.77, ceiling prices were displayed at only one table. Twenty-foot show case display of men's union suits, Duo-Fold and other makes; no ceiling price displayed. Forty-foot display of men's assorted cotton and rayon pajamas, no ceiling price posted except at end of shelf, which could not be seen at point of sale. Men's underwear section, athletic shirts and shorts, cotton union suits, no ceiling price posted in this section. One-hundred-foot display of hosiery in show case; no ceiling prices were displayed. Table display of men's Vacuum Grip Garter Socks, no ceiling price displayed. In the toilet goods section——

Q. (Interposing.) May I interrupt you here? Was
163 Mr. Weitzberg with you all this time?—A. Mr. Weitzberg was with me up to that time during the tour of the first floor.

Q. All right. Now then, what did you and Mr. Weitzberg do then?—A. I pointed out to Mr. Weitzberg the postings in the various departments; as I have mentioned here, and we still continued to tour the store and I pointed out to him the various departments where posting—where there was no posting in plenty of departments where cost-of-living commodities existed.

Q. Now, will you continue and describe those instances where you pointed out the matter of posting to Mr. Weitzberg?—A. Well, as far as we went on the first floor that afternoon—that was as far as we went. From there we entered through the radio and luggage section; we entered the men's new store on the other end of the building. I noticed some postings. I noticed that there wasn't postings on various items in the men's furnishings department.

Mr. HORSKY. Were or were not?

A. (Continuing.) Were not.

I referred to a display of men's raincoats in that department in reference to ceiling prices.

Q. Was there a ceiling price list?—A. There was a ceiling price on the articles, yes. I referred to the value of the
164 coats. We checked in the office in reference to the coats, and I left and came back. That was the extent of my visit that day with Mr. Weitzberg. I left approximately at about a quarter of six.

Q. Now then, did you make any further check in the store with respect to posting?—A. The next day I went back into the store with Mrs. Ruth Niblick, and together with Mrs. Niblick I continued my investigation in the store in reference to posting.

Q. And what further did you see and observe with respect to that?—A. In the toilet goods section, soaps were displayed in the toilet goods section at at least 10 different locations; Aisle tables, on top of show cases. Ceiling prices were displayed in front of column in the corner; customers could not determine ceiling prices at point of purchase.

Q. Now, will you explain what you mean by that?—A. Why, there were large displays of soap in the aisles on top of counters, approximately 30 or 40 feet away from the place of posting, and there wasn't any posting at the point of purchase whatsoever of these cost-of-living items.

Q. All right, thank you. Will you continue?—A. A display of sanitary napkins, Modess, displayed on an aisle table
165 with no ceiling price displayed. Ladies' hosiery, on two aisle tables were displayed rayon hosiery; no ceiling prices displayed. No ceiling prices were visible in ladies' hosiery section; salesgirls advised me that ceiling prices in silk hosiery section were taken out recently. Ladies' underwear section, rayon panties, briefs, were displayed on tables; no ceiling prices were posted. Ladies' sweaters, displayed on counters; no ceiling prices posted. On the third floor, no ceiling prices posted in ladies' gowns and underwear section. Women's coats, no ceiling prices displayed. Department 46, no ceiling prices posted on women's girdles and corsets. Department 26, no display of ceiling prices on men's shirts. Department 522, which is in the basement, large displays of sweaters with no ceiling prices posted. That is about the extent of my investigation with reference to the ceiling price posting.

Q. You say that is the extent?—A. Yes; of that day.

Q. Have you made any further investigation?—A. No.
166 From time to time, as we worked in the store, I made notations of the various things that existed in the store.

Q. And do you have any recollection of any other situations that you noted particularly?—A. When I was making an investigation in the furniture department I ran across two or three pieces of furniture that had no ceiling price on them at all, and the buyer told me that the price tags must have been lost off the furniture. There was no display of ceiling prices on two or three pieces of furniture we saw there, which could have happened.

Mr. AUSTIN. You may cross-examine.

Mr. HORSKY. No cross-examination.

Mr. AUSTIN. That is all, Mr. Fath.

(The witness was excused.)

Mr. AUSTIN. I wonder if we could indulge the Court for about 5 minutes, please?

The COURT. Of course, we can take a five-minute recess.

(Whereupon a short recess was taken.)

The COURT. All right, Mr. Austin, you may proceed.

Mr. KAPLAN was recalled on behalf of plaintiff and testified further as follows:

167 Direct examination by Mr. AUSTIN:

Q. Following the investigation in the three departments which you have described, Mr. Kaplan, what other de-

partments, if any, did you investigate?—A. Sixty, 59, 76, 69 relating to the furniture departments.

Q. Those are all furniture departments of one type or another, are they?—A. Yes.

Q. Just what particular types of furniture do the respective departments handle?—A. They carry living-room furniture, bedroom furniture, mattresses, and bedding.

Q. Now, will you just identify the department number with the type of furniture that is sold in it? For instance, what was sold in Department 60?—A. Mattresses and bed springs.

Q. In Department 59?—A. Living-room furniture, I believe. I don't know the exact categories of each one offhand that they carry. We work by department number in all those cases.

Q. You work by department number?—A. Yes, sir.

168 Q. And do you recall Department 69?—A. Yes; that was one of the furniture departments; Mr. Singer was the buyer. He also had some bedroom stuff, living-room furniture.

Q. And Department 70, Mr. Weiner's department?—A. Novelty furniture, I believe they call it.

Q. Now, then, with reference to the Department 60, will you describe generally your procedure in the investigation of that department?—A. We learned from Mr. Etelson, and later the buyer and merchandise man in the furniture department, that they had records which would show the exact March delivery date for all the merchandise sold in those departments. The store kept a file in their service department of all the sales of furniture from those departments, with the delivery dates stamped on these duplicates of the original sales slips.

We went down to the service room where these slips were filed. They are all filed in alphabetical order from the beginning of the year, and we picked out from these files, going through the letters A right through Z, all the sales slips they had there, every sales check that showed stamped on it some date delivered in March. When these were finished we picked

169 out Department 60; the sales slips would have the department from which the furniture was sold.

We assembled from all of these March deliveries Department 60 sales slips, and all these slips had stamped on them "delivered in March" at one time or another. We assorted these sales slips by manufacturer. The sales slips would have on them the manufacturer's identifying number, and we would take all the sales slips from one particular manufacturer and put them in one pile. We did this for all the manufacturers represented in these March sales. When this was finished we took the manufacturer's sales slips and broke them down by the

style numbers of the various items sold by that manufacturer, so that if style number 206 had been delivered on March sales slips, those would be put together; if there were 16, those would be put together.

We went through these various slips and picked out—for Manufacturer A, Style 206, we had 16 March deliveries. We went through those 16 slips and picked out the highest price on the March delivery. This would represent the highest delivered sale in March of that particular item. That was done by manufacturer right through the department. When this was finished we took all these sales slips which represented the highest delivery in March for the particular items which were sold in March. There were many items in these departments
170 which were not delivered in March which we didn't check. We just took those items which had deliveries in March.

The store, we were informed, had an inventory control at their warehouse where they had a system of guide cards. These guide cards would designate for each particular manufacturer and style number and for each different item the date of the sale and to whom it was sold. Therefore, with these March delivery checks we went over to the warehouse and checked them against the guide cards for Department 60. In those cases where we had a sales slip for an item at the highest delivered price in March appearing on the guide card at a higher price for a sale after May 18, 1942, the date on which these retail sale ceilings were effective, we copied this item down. If there was more than one sale after May 18th they were all copied down, since these sales would have been higher than the highest March delivery for that item. A schedule was made of all these items. I might say that the store, in most of these furniture departments, had had somebody there at all times assisting us and picking out these cards, identifying them, and checking our lists. When we finished with this list in Department 60 the schedule was made of all items which were sold after May 18th
171 at prices higher than the highest March delivery sales slip which we had procured from the store's files.

Q. I hand you, Mr. Kaplan, what has been identified as plaintiff's Exhibit 30 A, B, C, D, E, F, G, and H. I ask you what that purports to be.—A. That is the store's cost-of-living statement and supplement as filed with the War Price and Rationing Board of the OPA, and likewise for this department it includes the base period statement. This was made from the copy on file at the War Price and Rationing Board.

Q. Now, then, in checking over the exhibit, what appears with respect to the identification of the various items listed

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thereon?—A. They have under "Article" the type, the description of the piece of furniture, such as bed. Then in the next column they have the manufacturer's number. In the following column they have the style number, which identifies that particular type of merchandise. Then they have additional description, and in the final column they have the ceiling price, which should have been the highest March sales price or the selling price for that item.

Q. Do you find, with respect to that exhibit, the style number listed?—A. Yes.

172 Q. And that is one of the reasons, is it not, that you state that you were more able to identify the various commodities in this particular department than in some of the prior departments that you describe?—A. That is one of the reasons, yes.

Mr. AUSTIN. I offer in evidence, if the Court please, Exhibit 30 A, B, C, D, E, F, G, and H.

(The document which was previously marked "Plaintiff's Exhibit 30 A, B, C, D, E, F, G, and H" was received in evidence.)

By Mr. AUSTIN:

Q. Now, I hand you what has been identified as plaintiff's Exhibit 31 A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O, and ask you what that purports to be?—A. That is the schedule which I referred to before, which we computed by taking the highest March delivery sale and all sales subsequent to May 18, 1942.

Q. Now, will you describe to the Court and explain the figures and names, and so forth, that appear here on the left-hand half of this sheet, particularly with respect to the source of information?—A. All the material that appears on the left hand of this page was copied from a March-delivered sales check which the store had on file. It represents the highest delivered sale which we could find from the store's files which was made for a particular item in March 1942.

173 The first column has the March delivery date. This is the date the item was delivered in March. The next column has the customer's name, which appeared on the sales check. The following column identifies the sales check by number. This number appeared on the sales check. The next column, under "Factory Style" are the numbers which were used on the sales check to identify the particular item. Then, the following column, under "Article" is a description of the item sold, such as a 3–3 mattress.

Q. What does that 3-3 designate.—A. That 3-3 is the size of the mattress.

Q. All right.—A. The next column shows the price, such as $19.99, which appeared on the sales check, which represented the highest delivery of that item in March. There might have been other deliveries of this item in March at a lower price, but inasmuch as we had one at this price, which would be the store's ceiling price, we did not copy down the low price sales of this item, since the high price governed.

Q. Now then, with respect to the information on the right-hand side of the page, will you explain that and the
174 source?—A. All the information that appears on the right-hand side was information that was taken from the store's guide cards.

Q. Now first, will you explain just what those guide cards are?—A. These guide cards are used by the store as a sort of inventory control of all the furniture which they have on hand, and every time a particular piece of furniture is sold, the guide card notes it—or rather, they note it on the guide card. The customer's name, the date of the sale, and the price at which it was sold to this customer. We therefore took these guide cards for the particular items and looked at all sales after May 18, 1942, because the sales prior to May 18, 1942 would not be governed by the General Maximum Price Regulation. We copied down from the guide cards all those items which appeared at a higher sales price than that which appeared on the highest delivery sales check for March for that item. The first column would indicate the date of the sale after May 18, 1942. The second column would be the customer's name, and then the third column would be the price as it appeared on the
175 guide card. That is the price charged by the store to this particular customer at that date.

The next two columns on my list do not appear on the guide cards. We computed, in this next column, the difference between the highest March delivery price of that item and the price a particular customer was charged, as in the first instance, $3.00. The customer was overcharged $3.00 for that particular piece of furniture. In the last column we collected all these items that appear by style number on the guide cards and on the sales check against the cost-of-living and the base period statement of this department in order to ascertain whether or not these items had been listed on their statement and at what price, if any. In some cases where the items were not listed we indicated in this column "not listed on the cost-of-living or base period statement and supplements." In other cases we would have a price listed on the cost-of-living or base

period statement which we would put down if the cost-of-living and base period statement would have this item listed at a higher price than the highest March sales price.

176 In fact, in some instances we found that the ceiling price on the list was even higher than the violations which we discovered. In other words, the sales after May 18, while they were higher than the March delivery sales, were lower than the prices submitted on the ceiling price list. In other cases we found that the alleged violations were not only higher than the prices appearing on the March sales check but higher than the prices appearing on the store's own ceiling price list.

Mr. AUSTIN. If the Court please, we offer in evidence Plaintiff's Exhibit 31, A through O.

The COURT. It is received in evidence.

(The document previously marked "Plaintiff's Exhibit 31, A through O," both inclusive and for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for the purposes of identification Plaintiff's Exhibit 32 and ask you what that purports to be.—A. These items were picked out of the previous exhibit which I mentioned before. In other words, they show a sales price after May 18, 1942, which is not only higher than the highest March delivery date, but is higher than the price appearing on the store's own cost-of-living and base

177 period statements.

Q. Will you just run through this first item there and point out the figures in the various columns which show the conclusions which you just stated?—A. The first column is the highest March delivery date for the particular item; the second item is the customer who purchased on that date; the third column is the sales check number; the fourth column is the factory and style number, describing the item; the fifth column is the item, such as utility cot 29 size; the sixth column is the price. All this information appeared on the sales check.

On the right-hand side, for the same item, we had a sale on September 10, 1942, to one Gabson. Gabson was charged $44.95. This was $5.00 above the highest March sales price. However, not only was this $5.00 above the highest March sales price; it was also above the ceiling price which the store had submitted as their ceiling price—$39.99—and the store's ceiling price also was above the highest March sales check of $39.95.

Q. I see you have noted a further second sale there. Will

you please point that out to the Court?—A. That sale also refers to the same particular item, which sold at $49.95, which was $10.00 above the highest March delivery price, and, likewise, was above the price on the ceiling price list. That
178 same applies to the other items listed in that exhibit.

Mr. AUSTIN. I offer in evidence Plaintiff's Exhibit 32.

Mr. HORSKY. No objection.

The COURT. It may be received in evidence.

(The document previously marked "Plaintiff's Exhibit No. 32" for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for identification Plaintiff's Exhibit 33 and ask you what that purports to be?—A. In checking the inventory cards and guide cards at the warehouses, we found items, as we went through our check, which did not appear on the cost-of-living statement or supplements or the store's base period statement.

We, therefore, took a spot check of these items and noted down items which were sold by the store which did not appear on any price list, cost-of-living or base period statement or supplement, and for which we had no way of knowing how the store had established a price on this particular merchandise since it had not been sold in March.

Q. Did you request the buyer or any official of the store about their records with respect to how they established these prices?—A. The store had the form OPA-7, and, as I understand it, the system they operated was as follows:
179 If the buyer received new merchandise, he was supposed to fill out one of the OPA-7's in order to show how he arrived at the price of the new merchandise. This form would pass through the Price Control Office, Mr. Etelson's office. From these forms the store would make up supplements of cost-of-living statements which the store had filed for the respective departments, and file the supplements at the War Price and Rationing Board.

None of these items which appear on this list had appeared on the cost-of-living or base period statements, and OPA-7's had not yet been submitted to the Price Control Office, so that they could forward to OPA the various new merchandise and items which were received in that department.

Q. Now, you speak of OPA-7's. Will you clarify that a little bit so we will know exactly what we are talking about?—A. This is, again, the store's form which we referred to before. It is a report for new merchandise for the Price Control Office.

which says that this form is to be made out for each new item and sent to the Price Control Office when merchandise arrives.

Q. You mean the store's Price Control Office?—A. The store's Price Control Office; that is right. This form is sent to the store and from this form the Price Control
180 Office, I understand, would make out the list for the OPA. If this form was not submitted, the Price Control Office would not send a form to the OPA on a new item.

Q. What did you say with respect to these records as to your inquiry for them?—A. There were no records showing how the prices were arrived at for the items on this exhibit.

Mr. AUSTIN. Plaintiff offers in evidence, if the Court please, Exhibit No. 33.

Mr. HORSKY. No objection.

The COURT. It may be received.

(The document previously marked "Plaintiff's Exhibit No. 33" for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for identification Plaintiff's Exhibit No. 34 and ask you what that purports to show?—A. In checking the guide cards, we found some items which apparently were not sold in March but were sold after May 18, according to the guide cards, at a price higher than that appearing on the store's base period and cost-of-living state-
181 ments. That is, they would have a ceiling price of $39.95 for this particular item, but was sold after May 18, for $39.99 and then later at $44.95, $44.99. All the items in this exhibit are in that category.

Q. Now, for the purpose of further identifying this exhibit, will you refer to the first line across and explain it, together with the source from which that information was obtained?—A. This information was originally obtained from the guide cards of the store. The factory number would be 31; the style number of the item would be 14; the article, a sofa bed; wine describes the finish on the card of the item; the next column indicates the date the merchandise was received by the store—8/5/42. The card would show the original price—$39.99.

Q. What do you mean by that original price?—A. That is the price at which the item was brought into the store and, on the store's confirmation, marked retail, which we checked. I mean, as we have the confirmation number here, it would appear as retail price $39.99. The next column indicates the subsequent sales after August 8, 1942, at which price that particular item was sold. It was sold at $39.99 and $44.95, $44.98, and

$44.99. The ceiling price for this item on the store's own base period and cost-of-living statement was $39.95.

182 Q. In other words, all the information in all of the columns except the last was obtained from the guide cards?—A. That is right; and was checked with the confirmation.

Mr. AUSTIN. I offer into evidence, if the Court please, Plaintiff's Exhibit 34.

The COURT. It will be received.

(The document previously marked "Plaintiff's Exhibit No. 34" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Now, Mr. Kaplan, will you explain briefly your procedure and method of investigation in Department 69?—A. Department 69—a similar procedure to that which we just outlined in 60 was gone through. The type of records there were similar to those which we found in Department 60.

We went to the service records of the store. We pulled from those records, again, all of the delivery sales checks for Department 69 for the month of March.

I might add that all these sales slips in 60 and various furniture departments, 69, were in one file so that originally we pulled the sales slips for all four departments, and then we assorted them one by one. So that after we had pulled all the sales slips, the delivery dates for March in Department 69, we again broke them down by manufacturer according to manufacturer's number.

When this was done, we broke them down further to
183 particular items by style, assembled all the sales checks for a particular style; and, then, from this grouping, would pick out the highest price of that particular style number that was delivered in March.

We took all these sales slips and brought them to the warehouse where these guide cards were kept. The same procedure, again, was followed.

We took the sales slips, checked them against the guide card for that particular item; and in those cases where the guide card said it was a sale after May 18 at a higher price than that appearing on the sales slip we copied these down.

In this particular department we worked with the immediate cooperation of one of the buyers—Mr. Singer in 69 for a while and Mr. Crone, who is a buyer in the furniture department in 59.

In all cases where there was a question as to whether or not

an overcharge on the guide card was proper, Mr. Crone would check and iron it out with us.

We made, in this department, a duplicate copy for the store so that they would have the record of the alleged violations.

Mr. Crone, likewise, would pull the sales slips for that department for that particuar item himself, or somebody else in the store to check our findings.

184 When we had finished the complete list, Mr. Crone, in some instances, had been able to find higher March delivery checks and we crossed them off our list. That is, we might have had a slip purporting an item to be sold at a certain price in March. Mr. Crone, in double checking with his department, might have found another sales slip, which, for some reason, we could not find which might have not been in the files, showing that item had been delivered at a higher price than the slip we had. This item would then be checked off the list.

When the final list was compiled, Mr. Crone, for this department—although he is not the buyer—had a copy of all our findings in regard to overcharge in this department.

Q. I hand you what has been marked as Plaintiff's Exhibit 19, A through Q, and ask you what that purports to be.—A. This is a copy of the store's cost-of-living commodity price list and supplement, which they had on file at the War Price and Rationing Board, and which the store had a copy of on hand as their base-period statement and cost-of-living statement which they gave us when we worked with the particular department.

Mr. AUSTIN. We offer into evidence, if the Court please, Plaintiff's Exhibit 19, A through Q.

The COURT. It may be received.

185 (The document previously marked "Plaintiff's Exhibit No. 19, A through Q" both inclusive, was received in evidence.)

By Mr. AUSTIN:

Q. Now, I hand you what has been marked for purposes of identification Plaintiff's Exhibit 20, A, B, C, and D, and ask you to tell what that purports to be.—A. This is a schedule which, on the left-hand side, again, we have all the information which appeared on the highest March sales check for the particular item. On the righthand side we had the information which we copied from the guide cards in the warehouse. There are several items on this list for which we have an item with delivery date number, as the first one, with no information on the right-hand side. These items had appeared on our original

list, but in cross checking again with the buyer in that department, we found a higher sale for this item which would conform to the proper ceiling price of all the items that were sold after May 18, so we did not list them as overcharges.

Q. Now, then, will you go through this exhibit with respect to the item listed there in the second line and explain it, together with the source of the information?—A. The data on the left-hand side, which I will refer to now, all appeared
186 on the sales check which represents the highest March delivery date for that particular item. Therefore, we had a delivery date on March 20, 1942, to D. H. Johnson; sales check No. 27–4097; factory No. 13254; style No. 1; one vanity, lime oak. In March this was $36.00. On the other side of the chart we have information which we copied from the guide cards. This shows what the various dates are. The first one, for example, a customer by the name of Reddish paid $38.00 for the same particular item.

The next column represents the overcharge to this customer, which would have been $2.00 for this particular customer. The final column, again, we checked with the store's ceiling price list and found this particular item did not appear on any list which the store had submitted to the OPA or had on hand. In other cases we did find the items listed but at prices which were in excess of the price in March for that particular item.

Q. Now, there is a procedure followed in obtaining the information which appears on Plaintiff's Exhibit 20, A through C. Is that virtually the same as appears on the corresponding exhibit with respect to Department 60?—A. Yes.

Q. Now, then, do these items which you have listed on the left-hand side reflect all of the sales of the Department
187 in March?—A. They don't represent all the sales in March because a lot of these particular items might have been sold a dozen or fifty times. We were just interested in picking out the highest delivery sales check in March. We had assorted the others, but if they were at a lower price, they were of no use to us in this check.

Mr. AUSTIN. The Plaintiff offers in evidence Exhibit 20, A, B, C, and D.

Mr. HORSKY. No objection.

The COURT. It is received.

(The document previously marked "Plaintiff's Exhibit 20, A through D" both inclusive, was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been identified as Plaintiff's Exhibit 21 and ask you what that purports to show.—A. Here, again, we have items which appeared on the other exhibits. We

found here, as in the previous exhibit, that not only had the store charged more than the highest March delivery price for certain items, but they had charged more than their own submitted ceiling price for the particular item; such as in the first example, the sales check for March showed a delivery to Cohen, which was the highest delivery for this particular chest; manufacturing style 171–15, 25–10; at $56.95
188 However, on May 22, a customer by the name of Wallen paid $64.95, which was an overcharge of $8.00 from the highest March price. Not only was that $64.95 higher than the March sales slip, but it was higher than the price appearing on the store's own ceiling price statement.

Q. And that same holds true with the other items?—A. With the other items, yes.

Mr. AUSTIN. I offer in evidence, if the Court please, Plaintiff's Exhibit 21.

The COURT. It will be received.

(The document previously marked "Plaintiff's Exhibit No. 21" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Now, I hand you what has been identified as Plaintiff's Exhibit 22, A, B, and C, and ask you what that purports to be.—A. In checking the guide cards in the warehouse, we found a great number of items which were sold after March, and in many cases after May 18, and which did not appear on the store's cost-of-living or base period statements and supplements. We made a note of many of these items which appeared that way. We, likewise, asked Mr. Singer, in this particular department, if he had filled out the store's own form OPA–7 for the new merchandise which had been re-
189 ceived by this department since the filing of the original list. Mr. Singer had filled out a few OPA forms. I don't know whether it was three, four or a half dozen. But this did not purport to represent even a fraction of the new items of merchandise which had been received by this department. He stated he had not compared these or shopped these items as yet in order to establish prices, even though sales of the items had been at the prices listed on this schedule.

Q. You say Mr. Singer was unable to furnish you with the store's OPA–7 forms with respect to those items?—A. Yes.

Q. Did he give you any information or explanation of his inability to do that?—A. Mr. Singer stated he was busily preparing those OPA–7 forms but he had not compared them or shopped them and filled them out in final form for his price control office. He had a record, he stated, of this new merchan-

dise he had purchased, in which he had listed for himself, but, as yet, had not submitted any OPA–7 forms.

Mr. AUSTIN. If the Court please, we offer in evidence Plaintiff's Exhibit 22 A, B, and C.

Mr. HORSKY. No objection.

The COURT. It may be received.

(The document previous marked "Plaintiff's Exhibit No. 22, A, B, and C" for identification was received in evidence.)

190 By Mr. AUSTIN:

Q. I hand you what has been identified as Plaintiff's Exhibit 23 and ask you what that purports to be.—A. Here, again, we have items which were not sold in March but were sold after May 18, 1942, at a higher price than that on the store's submitted ceiling price list. These items were taken from the store's guide cards. They indicate that although the store had placed the ceiling price on them at a later date they were sold above the ceiling price.

Q. Now, then, will you take the first item, for instance, across, and explain to the Court the sort of information and what it purports to mean?—A. Well, the first column is the factory number, 171; the second is the style number of the particular item, 251–3; the third one is the article which described it as an "ML table"; the next one is the finish of the table, walnut veneer; the next one is the date when the merchandise was originally received in the store.

This was checked with confirmation which appears at the far end—confirmation 20251—as being correct and being brought in on that confirmation as $46.95. Subsequent to that March date and after May 18, this item was sold for $48.95—

191 and this will appear on the guide card for this particular item in the store. However, the store had on their own base period or cost-of-living statement the same item, the same style number, from the same manufacturer, priced at $46.95.

Q. Did you ask the buyer in that department if he had any record showing how he determined that ceiling price?—A. I didn't question the buyer about this particular ceiling price. I questioned him about the ceiling prices of all the new merchandise that had been brought in, and he only had those few OPA Form 7's which did not purport to list a fraction of the various items.

Mr. AUSTIN. I offer into evidence, if the Court please, Plaintiff's Exhibit No. 23.

Mr. HORSKY. No objection.

The COURT. It may be received.

(The document previously marked "Plaintiff's Exhibit No. 23" for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been identified as Plaintiff's Exhibit 24 and ask you what that purports to be.—A. These are items which we found in the guide cards of the store which indicate from the investigation the practice in this particular department which we had no way of checking at the time of our investigation. In other words, merchandise which,
192 according to the guide cards, if it had not been sold in March would appear on the confirmation at one price. At a later date; after the merchandise had been received, it was sold at a higher price than this particular confirmation. Then, in most cases, we would find this particular item on the ceiling price list at a still higher price. There were no records available for us to ascertain which were the proper price of that particular item.

Q. Now, will you take the first item there and describe the source of the information and what the respective entries show?—A. The first is the factory number; the second is the style number, describing the item on the guide card; the next is the article; the next would be the finish; the next column would show the date the merchandise was received; and the next would be the original price placed on the merchandise when it was received. That was in August 1942. The card showed subsequent sales of that particular item at $68.00. In checking this against the ceiling price list we found the same item appearing on the ceiling price list at $72.00.

Q. Now, then, did you make any inquiry of the buyer of this department concerning the records for the establishment
193 of these ceiling prices?—A. Again, I did not refer specifically to these items. In my original interview with Mr. Singer I questioned him about his policy and practice of selling items for which he had not yet filled out OPA-7's, or for which he had no record showing how he established the price, inasmuch as these were new items and never priced before. In other words, many items were sold by the store prior to the time a comparison might even have been made, or, if it was made, the buyer had not the information available or had no records to show that he made such a comparison.

Q. In other words, the commodities apparently were sold and the price established before either any comparison was made or any record of a comparison was made?—A. Yes.

Q. Now, then, with respect to the second last item on that list, No. 745, what did you find in that particular instance?—A. In that particular instance, just as in the other instance, the

store had priced this item at $35.00 when it was brought in under confirmation. Then it was sold at $19.00. Apparently it was sold at that price for a sale—I assume it was a sale. Then we checked this item against the ceiling price list. We
194 found the price of $40.00 for the same item on the ceiling price list.

Mr. AUSTIN. I offer in evidence, if the Court please, Plaintiff's Exhibit 24.

Mr. HORSKY. No objection.

The COURT. It will be received.

(The document previously marked "Plaintiff's Exhibit No. 24" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Mr. Kaplan, will you describe for the Court the procedure followed in investigating Department 76?—A. In this department we used the sales slips and guide cards for our information. We assorted the sales slips of this department. Then we isolated the sales slips for a particular manufacturer and then broke down the sales by this manufacturer by item. Again, we picked out the highest sales slip for the particular item sold by this manufacturer and delivered in the month of March. All these slips were once again taken to the warehouse and checked against the guide cards of the warehouse. Here, again, we listed——

The COURT. Are you getting a little tired, Mr. Kaplan?

The WITNESS. Yes, sir.

The COURT. Well, you have had a pretty good work-
195 out. You just finish the answer you are making and we will adjourn for the day.

A. (Continuing.) Here, again, we listed all sales after May 18, which appeared on the guide cards at prices higher than the highest March delivery price for the particular item.

The COURT. All right. Now, if you will remember just where you are in this examination it will help us when we start out again.

Mr. GORDON. May I ask you something before we adjourn, if the Court please?

The COURT. Yes.

Mr. GORDON. The Government counsel tells me his case is getting through a little quicker than he expected. One of our principal witnesses, and logically the first witness, is Mr. Levi, who installed our system of control and was in charge of it from early in the year until July. Now, he is now an officer in the Coast Guard in active service in Baltimore. He had arranged to get leave on Monday and Tuesday and we had expected to start our case about Monday, as nearly as we could figure out,

and we were going to put him on as the first witness. I am a little disturbed about the case getting through a little sooner than expected and I want to tell you the situation.

196 The COURT. I think I have the medicine for your ailment. I must tell you that another case has the right-of-way for tomorrow.

Mr. GORDON. I see.

The COURT. It is possible that I might finish that case by noon, but I am uncertain about it. Perhaps it would not be fair to bring so many people back here under an uncertain situation of that kind. So I had determined in my mind that I would continue this case over until Monday.

Mr. GORDON. Until Monday?

The COURT. Yes. And I could finish the other case tomorrow. We will proceed at 10:00 o'clock on Monday morning and that will give you plenty of time to get the witness.

Mr. GORDON. You probably have not a great deal more as the case is now.

Mr. AUSTIN. No.

Mr. GORDON. So we will tell him to be here Monday and to go ahead.

Mr. AUSTIN. Yes.

Mr. GORDON. That will be fine.

The COURT. If necessary, his testimony could be taken out of order.

Mr. GORDON. Yes, sir.

(Whereupon, at 3:55 o'clock p. m., the hearing adjourned, to reconvene at 10:00 o'clock a. m., Monday, January 18, 1943.)

201 PROCEEDINGS

The COURT. We have a witness on the stand, I believe.

(Mr. Kaplan resumes the stand.)

The COURT. You may proceed.

Direct Examination, by Mr. AUSTIN:

Q. Just before the close of Thursday's session, Mr. Kaplan, you had answered the following questions: "Mr. Kaplan, will you describe for the Court the procedure followed in the investigation of department 76?" Do you recall whether you had completed the answer to that question or not?—A. I completed the answer to that question.

Q. I shall hand you what has been marked for identification as plaintiff's exhibit 35–A, B, C, D, E, and so forth, through O, and ask you what it purports to be?—A. This is a copy of the department's cost-of-living statement as filed with the

War Price and Rationing Board, and the supplements. This was likewise on file at the store and was used as both the cost-of-living statement and the base period statement for department 76.

Mr. AUSTIN. Plaintiff offers in evidence, if the Court please, plaintiff's exhibit 35–A through O.

202 Mr. HORSKY. No objection.

The COURT. Received.

("Plaintiff's Exhibit 35–A through O," previously marked for identification, was received in evidence.)

By Mr. AUSTIN:

Q. Now then, I hand you, Mr. Kaplan, what has been described as plaintiff's exhibit 36–A, B, and C and ask you what this purports to show?—A. This is a schedule of sales above ceiling which we took after analyses of both the sales checks and the guide cards of department 76 in the store. The items on the left-hand side of this page represent the highest delivery dates of particular items mentioned in that column. On the right hand side we have sales of the same items priced above the highest March delivery.

Q. Now will you just go through this, Mr. Kaplan, with respect to—say the second item across. You might explain first the absence of figures on the right-hand side of the first column.—A. This is one of the items which we had first listed as being a possible violation. At a later time the check showed that there was a sale of this particular item at a higher price which would show that the store's ceiling price had been greater, so we eliminated sales as violations from the schedule.

203 The next item shows delivery on the 10th of March on the sales check No. 15976–12, factory No. 813, style No. 64 of one table, walnut. The price was $29.95 when delivered in March. After May 18th we have sales—this sells above $29.95 for the customers listed here [illustrating]. The sales were at $39.95, an overcharge of ten dollars for it; an overcharge of ten dollars for each customer on this particular item. The last column shows that the store, on their own ceiling price list, had submitted this item as being $39.95 in March.

Q. Now, then, I notice that on this right-hand column in some places you have figures and some are not listed. Explain that.—A. We checked all these items against the store's cost-of-living and base period statements. In those cases where we found the price listed against the particular style number for the item we put that price down. In other cases where there was no listing of the item on any statement, we included it as not listed in this exhibit.

Mr. AUSTIN. If the Court please, we offer in evidence plaintiff's Exhibit 36-A, B, and C.

Mr. HORSKY. No objection.

The COURT. Received.

204 (The document previously marked "Plaintiff's Exhibit No. 36-A, B and C" was received in evidence.)

Q. Now then, Mr. Kaplan, I hand you what has been identified as plaintiff's Exhibit 37 and ask you what that purports to show?—A. In checking the guide cards at the warehouse we noticed that many items did not appear on the base period or cost-of-living statements. We made a list of these particular items from the guide cards. No prices as yet had been established by the store on these particular items, or if they had, there were no records, or no lists had been sent to the War Price and Rationing Board as yet.

In going through these items we noticed that when the item would be brought in, it would be brought in at a particular price such as the original, the $10.95, the first item. Then at a later date we would find a sale of $12.95. In some cases the subsequent sales would be higher than the original sale. The original price was verified by confirmations for the particular item of the store. The confirmation appears in the last column.

We had no way of establishing what the ceiling price should have been on this item. We thought it significant, however, that the original price, or the retail price, or contemplated price, for the particular item brought in by the

205 store which, according to the merchandising policy of this store would have been the sales price of this item, was lower than the first sales price of the particular item in many instances.

Q. Will you identify more clearly this column where you have marked "original." Just what is that?—A. This original is the price which had appeared on the store's confirmation when the item was brought into the store as the contemplated retail selling price of the merchandise. The next column is the sales price of the same item as it appeared on the guide card at the warehouse. In many cases higher than the then contemplated original sales price of the item.

Mr. AUSTIN. If the Court please, we offer in evidence plaintiff's Exhibit 37.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 37 for Identification" was received in evidence.)

By Mr. AUSTIN:

Q. Now, Mr. Kaplan, did you make any further investigation of the Hecht Company after you completed in-
206 vestigation of Department 76?—A. We investigated Department 59.

Q. And will you kindly describe the procedure followed in the investigation of that department?—A. In Department 59, as in the other furniture departments, we picked out from the store's files the highest delivered sales checks for the various items in March. These were assorted first by manufacturer and then by style number. From the various style numbers we picked out the highest delivered price of a particular item in March.

When this was finished, we had the highest delivered price for the varied items we found had been delivered and sold in in March. We took these sales checks to the warehouse. We checked with the particular guide cards at the warehouse. Again we made a schedule of all those items. We made a schedule of all those items which appeared at the time on the warehouse cards at prices higher than the highest delivery price in March which were sold after May 18, 1942.

Q. Now, I hand you, Mr. Kaplan, what has been identified as plaintiff's Exhibit 12–A through O and ask you what those purport to be?—A. These are copies of the store's cost-of-living statement which were on file at the War Price and Ra-
tioning Board and which the store had a copy of when
207 we investigated the particular department. These copies contain a supplement of the cost-of-living statement, and we use both the base period and cost-of-living statements for this particular department.

Mr. AUSTIN. If the Court please, we offer in evidence plaintiff's Exhibits 12–A through O.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 12–A through O" was received in evidence.)

By Mr. AUSTIN:

Q. Now, then, Mr. Kaplan, I hand you what has been described as plaintiff's Exhibit 13–A, B and C and ask you what those exhibits purport to show?—A. This is a schedule showing the sales above the highest delivery price by the store of the particular items, these sales taking place after May 18, 1942. This list was compiled—first the items appearing on the left-hand corner—from the sales slips. They were checked with the guide cards at the warehouse, and the items appearing on the

right-hand side show the sales above the highest delivery price in March.

In some cases there were items which we had marked down at a particular delivery price in March which the buyer in each department on a subsequent check showed us. When there was a higher sales price in March, we eliminated it.

208 A copy of this exhibit was made out originally in duplicate for the buyer of this department, Mr. Crone. He checked these particular items with us—both the sales checks and later the guide cards at the warehouse in order to be sure that the items appearing on here were as exact as they possibly could be.

Q. Now then, I notice too that on this exhibit you have in the right-hand column, in some instances, the words "Not listed," and in other instances, the figure. Will you explain that?—A. Again these particular items were checked against the store's cost-of-living and base period statements. Where we found a particular item on the submitted ceiling price list, we put that price down. In other cases where it was not even listed on either one of these statements we indicated again, "Not listed."

Q. I notice on page 3 in the last line across you have "Grand Total Overcharge, $1,366.64." Will you explain that, please?—A. That is a total of the overcharges on the particular items listed on this exhibit by the store. In other words, it represents the difference between what the merchandise was sold for and what it should have sold for. The customers were charged over on the furniture appearing on this exhibit $1,366.64.

209 Mr. AUSTIN: Plaintiff offers in evidence, if the Court please, Exhibit 13–A, B, and C.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 13–A, B, and C" was received in evidence.)

By Mr. AUSTIN:

Q. Now then, I hand you, Mr. Kaplan, what has been marked for identification as plaintiff's Exhibits 14–A, B, and C and D and ask you to explain that exhibit to the Court?—A. In going over the guide cards in the warehouse we found again items which appeared significant. They did not appear on any cost-of-living or base period statements or cost-of-living supplement, and we had no way of ascertaining what the proper ceiling price should have been on these particular items, but in going through these cards—take item 1, for example. The significance of the particular exhibit to us seems obvious.

Now the first column is class J, as appeared on the guide card. The next are the factory and style numbers and next, the description of the article. Then on the received date we see that on August 27, 1942, this chair, which cost the store
210 $19.00, was brought in on the original sales price contemplated to be sold at $27.88. The first sale, according to the guide card, was at $28.88, and this before the list had been sent to the OPA or any price under the GMPR had been established. Then, at a later date, the price was raised to $33.00 in October and then, in subsequent sales in October, to $39.95.

This follows through on the various items listed here. There was such a wide variety in the particular items, in many cases, in a period of five or six months, that without the store having established the price that they should have originally—the one brought in within the first month, the store's propriety in charging these prices for these various items can definitely be questioned, since they seem to vary thirty dollars and forty dollars in many instances. There was one particular item on page 3 of this exhibit—page 4 of this exhibit, 14–D. Article, wing chair; Style, 28. We see that it was brought into the store at a cost of $7.92. It was contemplated to be sold at $16.95 and was first sold at $15.00, but then in September the price was brought up to $24.95.

Q. I notice you have some names—proper names over here on the right-hand side in that right-hand column. Will
211 you explain that, please?—A. In some cases the customers' names were copied down—the people who had purchased the furniture on particular dates. You will also notice particular items in the various columns showing the various offering and sales price of the same item throughout different periods.

Mr. AUSTIN. If the Court please, we offer in evidence plaintiff's exhibit 14–A through D.

Mr. HORSKY. May I ask a question, please? Mr. Kaplan, in cases where the prices don't differ, what significance do you attach to that?

The WITNESS. There are some cases where the prices don't differ. We made a spot check, Mr. Horsky, of those particular items.

Mr. HORSKY. I am just asking about the items that appear on this exhibit which don't show any varying prices. Do they have any significance?

The WITNESS. They mean that those that don't have varying prices are prices that do not appear on the base period or cost-of-living statements.

Mr. HORSKY. That is the only significance?

The WITNESS. Of those particular items, yes.

Mr. HORSKY. No objection.

The COURT. Received.

212 (The documents previously marked "Plaintiff's Exhibit 14-A through D" were received in evidence.)

By Mr. AUSTIN:

Q. Now I hand you what has been identified as plaintiff's Exhibit No. 15 and ask you what that purports to be, Mr. Kaplan?—A. In checking the warehouse cards we found items which did not appear to be sold in March. However, these items appeared on the ceiling price list of the store. We thought it significant to note that again the original price and the subsequent sales price would be lower, in most cases, than the ceiling price which the store established on particular merchandise. Here again we had no way of ascertaining what the proper ceiling price in the particular merchandise should be, but it shows the importance of keeping the records and establishing prices on the merchandise as it comes into the store.

Q. And what was the source of the information which appears on Exhibit 15?—A. The information appearing on the guide cards was checked against confirmation showing when the merchandise was received in the store, to verify the original price, and then the last column is the price appearing on the store's ceiling price list.

Mr. AUSTIN. We offer in evidence, if the Court
213 please, plaintiff's Exhibit 15.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 15" for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been identified as plaintiff's Exhibit 16 and ask you what that purports to show?—A. These are items upon which the store had placed the ceiling price and which we found subsequent to May 18, 1942, selling, according to the guide cards, at higher prices than the original ceiling price placed on the item by the store.

Q. Now were you able to find records establishing these ceiling prices?—A. There were no records available establishing ceiling prices on these particular items. We assume, however, that the store must have placed a ceiling price on the item in some manner inasmuch as they appeared on either the cost-of-living statement or supplements which the store had filed with the War Price and Rationing Board.

Q. Now then, again, what do these figures in the column

"Original" mean?—A. The original is the price appearing on the confirmation as a retail price when the item is brought into the store. The next column indicates the price which
214 appeared on the warehouse card after May 18, 1942, for this particular item as a sale. The following column is the confirmation number which we use to check this item, and the last column is the ceiling price as it appeared on the store's base period and cost-of-living statements.

Mr. AUSTIN. We offer in evidence, if the Court please, plaintiff's Exhibit 16.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 16" for identification was received in evidence.)

By Mr. AUSTIN:

Q. I hand you what has been marked for identification plaintiff's exhibit No. 17 and ask you what that purports to be?—A. This department had a form which they called a "Sold Goods Mark-up." The store explained this form to me as being for mark-ups made differs after the merchandise had been sold. In going through these sold goods mark-ups, we found that there had been sold goods mark-ups above the established ceiling price of a particular item. That is, on the store's
215 cost-of-living or base period statement they would have a ceiling price for a particular piece of furniture. If that particular piece of furniture was sold by the department at a higher price than the original or present retail or ceiling price, as it would appear on the store's confirmation or records, the buyers of this department would, after the sale at the higher price, put through the sold goods mark-up.

I assume, in order that the store's records would show the price at which the particular item would be selling, this procedure was followed. We made a list here of those items which had been sold according to the sold goods mark-up above the store's own ceiling price. We have the mark-up date which was copied from the sold goods mark-ups, the number and the classification, and then the factory and style number and a description of the particular piece of furniture. This is one item which was marked up after the sale. The present price on the mark-up said $59.95? The proposed price at which the item was sold was $69.95, and this item appeared on the store's ceiling price list at $59.95, so whoever bought that particular item was overcharged ten dollars for this piece of furniture, according to the store's own ceiling price.

Q. Now does that same hold good for the balance of
216 the items listed on that sheet?—A. It follows for the rest of the items.

Mr. AUSTIN. If the Court please, plaintiff offers in evidence *plaintiff's Exhibit No. 17.*

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 17" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Now I hand you, Mr. Kaplan, what has been identified as plaintiff's Exhibit 18-A, B and C, and ask you to tell the Court what this purports to be?—A. In checking the sold goods mark-ups of this department, we found many items which had been sold and marked up which did not appear on the store's base period or cost-of-living statements. The store had never sent in to the OPA the established ceiling price on these particular items.

However, all these items were marked up after their sale because the sale was at the marked-up prices. It was necessary to put through these forms to show a sale at a higher price than the present retail of the item. The first item, high wing chair.

We would have a present retail price of $16.95; proposed
217 retail price of $19.95. The item was marked up three dollars when sold. This item does not appear at any price on the store's list. We had no way of knowing which should have been the ceiling price on items like this.

Mr. AUSTIN. We offer into evidence, if the Court please, plaintiff's Exhibits 18-A, B and C.

Mr. HORSKY. No objection.

The COURT. Received.

(The document previously marked "Plaintiff's Exhibit 18-A, B, and C" for identification was received in evidence.)

By Mr. AUSTIN:

Q. Now, Mr. Kaplan, you said, I believe, that in your investigation of department 59 that the buyer in that department was with you checking at the same time, is that correct?—A. He was with one of the members of the OPA throughout the check at the warehouse and the guide cards of Department 59.

Q. And just what did he do in checking the investigators?—A. Well, in checking the guide cards, in many cases a question would arise as to whether or not a sales date or a customer's

name or a price on a guide card would be a particular price.

Some of these items were written in pencil and there
218 might have been a question as to what the number would be.

We would consult with the buyer in those cases and use his explanation of his price. He likewise was given a duplicate copy of all the items we listed. He, in many cases, went back to the store's service files and attempted to check back according to his guide cards to see if there were higher prices in March.

In other words, the guide card would show sales of the particular items in January, February and March. We might have a delivery price in March of a particular item in a certain price. It was possible that we might have overlooked a particular sales slip or a sales slip might not have been in the files, since there were thousands of these sales slips we had to go through.

He would check back, according to the guide card, the sales in January, February or March. Maybe one of those sales had been deliverded in March at a higher price. In some cases where this was so we were able to cross these particular items off our list. The same would follow through with the sales after May 18th. In some cases there might have been refunds or the sales might not have been in May 18, 1942. The guide card might have been in error, and this was checked by the buyer.

219 Q. Did the store adopt that same attitude?—A. Mr. Crone, the buyer of 59, checked Department 69. The other buyer, for some reason, was not available, so Mr. Crone took on his duties. In 76 and 60 the buyers were there at their intervals, but did not make as thorough checks as the buyers did in 59 and 69.

Mr. AUSTIN. That is all, I believe.

Mr. HORSKY. Could we have a recess for about one minute, Your Honor?

The COURT. Yes.

(A brief recess was had.)

Cross-examination by Mr. GORDON:

Q. Mr. Kaplan, in your testimony yesterday, or Thursday, you were asked when you made your examination, and you replied from October 1st through the month of October and a few days in November. Was that your answer?—A. I believe that was the answer.

Q. Well, is that corect?—A. I believe that is correct.

Maybe I can clear up Mr. Gordon's question. Somebody from OPA was in the store sometime in September, but there

was merely a check of the store. Investigation—as a matter of fact, I did not come from New York until that time—did not take place until I came down from New York to conduct
220 this investigation, which was October.

Q. Now, Mr. Kaplan, in your affidavit that was filed when the preliminary injunction was asked for, you stated, "On or about September 17, 1942, pursuant to instructions from my superiors, I commenced an investigation of the Hecht Company." Will you just look at this and refresh your recollection?—A. That is correct.

Q. That is correct? Which is correct?—A. No; I mean this statement here is correct, but the statement I just made to you about my investigation was from October. Apparently the same discrepancy came in on this affidavit.

Q. You mean the affidavit is wrong?—A. No; I mean the date therein is not proper.

Q. Well, you signed the affidavit, didn't you?—A. That is correct.

Q. And swore to it?—A. Yes.

Q. But there is a mistake in it?—A. Yes.

Q. So it is possible to make mistakes, isn't it?—A. Oh, yes.

Q. Now, in your testimony you said that you had sev-
221 eral assistants. That is correct, isn't it?—A. Yes.

Q. How many persons other than yourself made the investigation? Do you want to think about that?—A. No. I wish you would rephrase your question. By saying "made the investigation"—I do not quite understand what you mean. There were several people in the store who, under my direction, copied down various lists and items as the investigation progressed. If you want to include them as part of making the investigation——

Q. Yes; all the people who were there in the Hecht store representing OPA at this time. How many were there?—A. From the date I went into the store, is that correct?

Q. From the date the investigation started, whenever that was, shortly before the 1st of October, until the end. How many people?—A. Do you mind if I try to count them off?

Q. No. Take your time. I am not trying to confuse you. Just get this straight. "Several" is not very definite.—A. I said several helped and several copied.

Q. Yes.—A. Do you want round figures?

Q. Yes.—A. You do.
222 Q. Would you say approximately ten?—A. Yes.

Q. Yes; that is better. And all those people in one way or another by looking at things or copying in some way

took part in the preparation of these exhibits that you have given to the Court?—A. May I explain now?

Q. Can you answer that question first?—A. All these people; yes.

Q. Yes; at different times took some part in preparing these exhibits.—A. I think "ten people" needs clarification for the Court. Ten people were in the store, but on a particular day if——

Q. (Interposing.) I understand there were not all ten at once. Please answer my question. There were about ten people who took part in this at one time or another, weren't there?—A. Yes.

Mr. GORDON. That is all I want to know.

Mr. HORSKY. No further cross-examination, Your Honor.

Mr. AUSTIN. The plaintiff rests at this time, if the Court please.

Mr. GORDON. You rest?

223 Mr. AUSTIN. Yes.

The COURT. The plaintiff rests.

* * * * * *

ROBERT M. LEVI, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Have you stated your name to the reporter?—A. Yes; I have.

Q. What is your present address?—A. My present home address is Lutherville, Maryland; working address, Curtis Bay, Maryland.

Q. And you are now a member of the Coast Guard?—A. Yes.

Q. An ensign?—A. Correct.

Q. You worked for the Hecht Company for a period of time before the OPA regulations began; is that right?—A. That is correct.

Q. Will you state when you began to work for the Hecht Company?—A. Well, approximately some time in February—middle of February.

224 Q. February of what year?—A. 1942.

Q. Yes. And you remained until what date?—A. I remained there until approximately—June the 20th, when I was taken sick.

Q. Before you began to work at the Hecht Company, where had you been working?—A. I had been a plant manager of a manufacturing concern in Baltimore, Maryland.

Q. For how long?—A. Approximately five years.

Q. That is from about——.—A. 1936.

Q. (continuing). 1936 or 1937?—A. 1936 or 1937.

Q. Will you tell us something about your education?—A. Well, primary education was at John Hopkins University, where I received a B. S. in Economics, specializing in accounting and tax work.

Q. When you came to the Hecht Company in 1941, what was your position—1942, excuse me.—A. I came originally as part of the Control Division with the idea in mind of making a complete survey of the pay roll system and a complete analysis of certain functions in the store to bring about better systems and greater efficiency.

225 Q. Did that bring you into contact with all departments of the store?—A. By that means I went into every department of the store, except for very rare instances.

Q. And in May of 1942 you were quite familiar with the entire organization of the Hecht Company?—A. In May I was completely familiar with the organization.

Q. Before the GMPR came out, did you have anything to do with OPA regulations?—A. Yes; I had quite a bit to do with OPA regulations.

Q. Could you tell the Court in as much detail as you can remember, what those regulations were and what you did with respect to them?—A. Well, there were a number of early regulations in reference to prices on refrigerators, vacuum cleaners, radios, and various and sundry articles along those lines, each individually regulated. For those there were certain records that had to be kept on all sales. A record had to be shown of our price lists being posted in the department of various models, and some of the regulations were definitely worded.

Q. Definitely what?—A. Definitely worded as to a fixed price that could be charged for a certain model. Those

226 were the price lists that had to be posted in each department. It was my job first to inform the department—to read the law and make a survey of it, and see that the law was carried out by the department and that the correct records were being established and the correct postings in the various departments made.

Q. When you say the law, you mean the regulations?—A. Regulations, I mean.

Q. What was your procedure with respect to a particular regulation? Will you explain that?—A. Well, in order to pick up a regulation as it came out, you usually had to pick it up from the New York Times which did not state the entire regulation.

From that point you would pick it up from the Federal Register and analyze the law, or the regulation.

The regulation was not stated in a method that a buyer in a department store could understand. It had to be analyzed, simplified and stated in their language.

That was the job that I had to do and I stated it and then had a certain number of forms run off, depending on how many departments in the store were affected by the regulation.

These forms were distributed. They gave all of the information that they had to know about the regulation.

Then, after they had digested it, I immediately went to the department—as soon as time permitted me to—to
227 look and see whether they were carrying out the various regulations.

By that method I found that we were establishing our records, posting our prices, and marking our merchandise correctly.

Q. At this time you were able to make a check personally of the compliance with such regulations?—A. Yes; at that time the regulations were not coming out too rapidly and we could keep up very easily with them.

Q. Did you have an assistant at this period?—A. I had a secretary at that time.

Q. Did you? I see. Do you believe that those regulations were properly complied with in all respects?—A. Yes; I think all of the regulations were complied with and the records kept properly.

Q. Would you explain to the Court what a buyer is and does, in general?—A. I would like to refer to this because I have written everything down here and I think it would help me.

Q. Surely, you may refer to it. I don't think you need to bother doing it elaborately, Mr. Levi. Just explain to the Court the idea in general. A. A buyer is primarily a person who has learned how to tell what the customer wants, go to the market and buy it at as reasonable a price as possible,
228 return to the store and sell that particular item to the customers.

They are taught by experience, primarily, what customers desire—what they want, and it is their job to understand what resources they come from and go to those resources in order to procure the merchandise required in a store.

They have few records, if any, to keep, except for their own purchases which they make.

Q. I think that is sufficient for the time. You mean, as I understand it, in ordinary times they keep only few records?—A. That is correct.

Q. Do you recall, Mr. Levi, that the—about the middle of

April, a visit by some gentlemen from the OPA?—A. I personally was out of the store at the time of their visit.

Mr. AUSTIN. I object, if the Court please.

Mr. HORSKY. I beg your pardon?

Mr. AUSTIN. I object.

Mr. GORDON. Just state what you know yourself.

The WITNESS. I returned and understood that Mr. Coombs——

Mr. AUSTIN. I object.

Mr. GORDON. Don't say that.

By Mr. HORSKY:

229 Q. Did you meet Mr. Coombs?—A. Yes.

Q. Did he say anything to you?—A. Yes.

Q. Can you repeat the conversation?—A. Mr. Coombs and I met on the second day in the store. He reviewed with me the procedure he had gone through in the store to establish a method for marking prices under the GMPR.

However, he gave me no knowledge of what the GMPR was about, only that he was trying to make a study to see how merchandise could be marked properly and clearly in case they decided to put it into a regulation.

Q. Did he express to you any appreciation for what the store had done?—A. He definitely had.

Q. To you?—A. To me.

Q. Yes?—A. That we had been very helpful; that he appreciated the time given him by both the buyers and the people in the shopping sections.

Q. Will you explain to the Court what the Hecht merchandise clinics are?—A. The Hecht merchandise clinics are meetings held during the winter months on Saturday morn-

230 ing and during the summer on Friday mornings where all executives, all buyers, assistant buyers, merchandise men, and people in the service divisions who are the executives in that section come together and have either someone talk to them or have an address made by someone in the store about a particular subject which is at the present time very important.

Q. Where were those meetings held?—A. They are educational, and at the time we are discussing they were held outside of the store in a building where no one could be reached by telephone and where no one could take telephone messages, so they could not be disturbed at the time.

Q. Did you recall a meeting at which a Mr. Saul Nelson spoke?—A. Yes.

Q. Were you present at that meeting?—A. I was present.

Q. Who was Mr. Nelson?—A. Mr. Nelson—I would like to check exactly.

Q. If you don't remember, it is all right.—A. I know he was with the Labor Board—not the Labor Board.

Q. The Bureau of Labor Statistics?—A. The Bureau
231 of Labor Statistics, because at that time he brought with him these various charts prepared by his Bureau at the discussion.

Q. What did he speak of at that meeting?—A. He spoke of price control as it had been carried out through the last war and as it was then being carried out in Canada and the need for price control in this country and what it would mean to this country to have it, and also what it would mean if we did not have some sort of control.

Q. Did people ask questions after he had finished?—A. After the talk there was a question and answer period. There was no reference made during the meeting that anything was forthcoming, but there was general knowledge given to all the people in the store of what price control was and what it required and what was meant by it.

Q. This was before the General Maximum Price Regulation was actually issued by the OPA?—A. Yes.

Q. Before the GMPR—still referring to that same period—before the General Maximum Price Regulation came out, what attempts had you made with respect to preparing yourself for a price control system? Let me make it more specific. Had you subscribed to any periodicals?—A. The Commerce Clearing House, War Service——

232 Q. (Interposing.) Is that the Service on the Judge's desk?—A. That is the Service on the Judge's desk, and the Federal Register, which is our base publication, the Wall Street Journal, and the Victory Magazine put out by the government.

Q. Did you ask for cooperation from the various trade associations?—A. Yes. At the same time we received always the publications put out by the National Retail Dry Goods Association and the American Retail Federation.

Q. When you say that the Federal Register was your base source, what do you mean?—A. Well, I was never satisfied with a law until I had read it in the Federal Register—that is, the complete law, and analyzed it myself from one end to the other, because the newspapers sometimes did not get the laws accurate, I know.

Q. Thank you. Did you have a budget at this time?—A. I was not restricted by a budget at this time. I had an unlimited budget.

Q. Who told you that?—A. Mr. Dulcan, as far as price control was concerned.

Q. Was that true of assistants?—A. I could have as many assistants as I required.

233 Q. Did you have any personal contact with OPA at this time, again referring to the period before the issuance of the General Maximum Price Regulation. That is, did you personally go down to the office of the OPA?—A. Yes, before the General Maximum Price Regulation was issued I went down in order to get our name on the Mail and File Section for both the WPB and the OPA, the reason being that the Federal Register used to carry the laws sometimes several days later than the newspapers, and the newspapers did not write the laws completely from end to end. They would only give you the digest.

In order for us not to break a regulation inadvertently, the law had to be gotten as quickly as possible.

Thus, I went to the Mail and File Sections of the two agencies to ask for any publication or printed matter which pertained to the regulations affecting a retail establishment.

Q. When you say two agencies, to which do you refer?—A. The WPB and the OPA.

Q. Was that always an adequate source?—A. No, it was very inadequate. Many of the regulations that affected retail trades we did not get, and many of the regulations which had no effect on retail trades we got a great deal of information on, so that all in all, I would say that we had to rely primarily on the Federal Register.

234 Q. This is in the mail, you are referring to now.—A. This came by mail, yes.

Q. Do you recall the issuance of the General Maximum Price Regulation? Do you remember the circumstances when it came out; yes or no?—A. I remember, yes.

Q. Do you remember approximately what day it was that it was first available to you?—A. I think it was approximately April the 26th or 27th.

Q. Could you fix the day of the week?—A. The day of the week?

Q. You don't remember?—A. I would say it was a Monday, but I cannot say I am definite on that fact.

Q. How many days was that before it came out in the Federal Register, do you remember?—A. That was approximately two or three days before it appeared in the Federal Register.

Q. How did you get it, Mr. Levi?—A. By going down to the OPA and requesting personally to be given one from the Mail

and File Section, which they gave me—I think it was the day following the issuance of the regulation.

Q. That would be about the 28th—something like
235 that?—A. Approximately the 28th, yes.

Q. What did you do as soon as you got this copy of the GMPR?—A. The first thing was to read it and analyze it, and then call a meeting of the executives of the store.

Q. When was that meeting called?—A. That meeting was called on the morning of the 28th, I believe.

Q. The same morning that you got the regulation?—A. The same morning that I got the regulation.

Q. What was the purpose of that meeting?—A. The purpose of that meeting was to discuss the general policy for laying out the procedure for working under this regulation.

Q. Was this meeting attended by the buyers and the assistant buyers?—A. The meeting was not attended by the buyers and assistant buyers. It was not because at that time the regulation was not clear enough in our own minds to call in a large group of people.

Q. Do you recall what that meeting decided to do?—A. Yes, we decided to get certain basic information immediately.

Q. Will you explain to the Court the nature of the
236 conclusions you reached on that meeting?—A. Would you mind if I read it?

Q. I would rather have you state it, if you remember it.—A. All right.

The first thing that we decided at that meeting was that there were two ways in which prices at the store could be above March prices. One was that prices were set on merchandise and had been delivered to the store after March at a higher price than during March, and thus, when we marked the merchandise, we based our retail prices at a higher cost price, and thus the merchandise would be selling for more in April or May than it did in March.

The second method in which merchandise could be selling in the store at a higher price than when it was sold in March was that if someone in the store took a mark-up, which is an increase in the retail price, over the March price.

Now those were the two methods by which merchandise would have increased in price over that sold in March.

Q. Between what times?—A. Between March and the time that this regulation was issued.

Q. What did you decide to do to take care of those two possibilities?—A. Well, we decided first that we should
237 find all the material that should come into the store after March at a higher price than material—than the same material had been delivered for during March.

Q. I hand you, Mr. Levi, a bulletin and ask you if that is a bulletin you sent out at that time.—A. yes.

Q. What is the date of that bulletin?—A. April 30, 1942.

Q. Will you read—will you read the whole bulletin?—A. "The OPA has frozen all prices and merchandise at the highest level for which they were sold during March 1942. This becomes effective for retailers on May 18, 1942, and becomes effective for manufacturers on May 11, 1942.

"It has come to our attention that certain manufacturers have increased their prices on merchandise shipped to us in April over the prices that we paid for the same or similar merchandise in March or prior.

"Since we will be able to maintain our prices at the March level, any increase in our cost will affect our mark-up.

"It is therefore extremely important that upon receipt of this notice you check all your filled orders and supply the information requested on the forms attached. Go through your orders of merchandise that was received in April to see whether or not your cost in April was greater in March
238 or prior.

"If your cost is greater, list the information on the sheet attached. A similar list will be sent to you to be filled out within a day or so with respect to merchandise on order for future delivery.'

"If you have any questions, please contact Mr. Robert Levi, extension 201."

Q. I notice that the initials in the corner are O. C. W. Will you explain who that is?—A. That is Mr. Oscar Weitzberg who is the controller of the store and who had this sent out after I had written it for him.

Q. He was working with you at the time?—A. He was working with me on the regulations.

Q. And this which is attached to is *is* in a form by which the information called for was to be filled out, is that correct?—A. That is correct.

Mr. HORSKY. I offer this in evidence.

Mr. AUSTIN. We object to the introduction of that, if the Court please.

Mr. JAMES. May I argue the objection, please. Our objection is not at all based on technical grounds. Our objec-

239 tion is based on what we feel is the very essence of the point raised by the defendant's defense, and we object to this whole line of testimony insofar as it is offered in support of the new matter contained in the defendant's defense.

246 Mr. GORDEN. If the Court please, this argument of counsel goes to the final merits of the case. It has been readily observed—we both understand this—this is all there is to the case. I mean it is the nub of the whole thing.
247 They are trying to prevent us from showing that we acted in good faith, that we made a determined effort to comply with the law, that we spent a large amount of money doing it, we had a great force of men doing it, and all the other things I said Thursday.

They are trying to prevent us from showing there is no necessity for the injunction, that we will comply just as well without the injunction as with it, and all the defense that we have.

Now, this is the sort of thing that I expected to argue at the end of the case. I am perfectly ready to argue it now. I have all my law and all my material. It occurs to me the Court can hear an argument of this sort with a very much better understanding of what is going on if we are allowed to put in our evidence subject to objection, and then the whole thing will be argued at the end of the case.

The alternative to that will be for me to make an argument now. Of course, as I say, I am prepared to do that.

The COURT. I think you made your position quite plain in your opening statement on Thursday.

Mr. GORDEN. But I didn't give any authorities.

The COURT. No; you haven't given your authorities. Mr. James has now outlined the authority of the Government. I think I see that distinction, and there comes up now an objection to an offer of evidence, and I think it would be
248 impossible for me to determine at this time what weight this evidence should have, if any, so I am inclined to receive the evidence subject to the objection, and after I have heard you gentlemen fully I will consider the law myself and give the evidence the weight that it ought to have, so I think you may defer further argument on the law at this time until the close of the case.

Mr. JAMES. For the purpose of the record, may exceptions be noted?

249 Mr. GORDEN. Certainly. We understand your exceptions to the whole thing, to all evidence of this sort, without renewing it.

Mr. HORSKY. I think that will save a lot of comment.

The COURT. Perhaps it will.

Mr. HORSKY. Certainly, everything this witness says from now on will be of the same nature, and I think a general exception to this witness from here on will take care of it.

Mr. JAMES. We certainly don't want to be in the position of making objections, if that is satisfactory to Your Honor.

The COURT. Yes; I think so.

Mr. HORSKY. I offer in evidence Defendant's Exhibit A.

(The document was marked "Defendant's Exhibit A" and received in evidence.

250 By Mr. HORSKY:

Q. Mr. Levi, referring again to this exhibit, will you explain to the Court where the buyers would get the information in order to fill out that exhibit, fill out the forms—the form that is attached to it?—A. The buyers when they place an order make out a confirmation and three copies of it. Is that what you are interested in?

Q. The confirmation has been explained to the Court, Mr. Levi. I think that need not be gone into. It was from
251 the confirmation that they would get it?—A. It was from the confirmation of the order to a concern. They would get the information, copy of which they retained.

Q. They would get it from their pink copy?—A. From their pink copy which they have retained in their own file.

Q. Was it your understanding at the time you wanted them to do that those pink copies would be accurate information?—A. Yes.

Q. Why do the buyers keep the pink sheets?—A. The pink sheet is kept by the buyer because it is the one record that the buyer has of outstanding orders, and orders come into the department that they have placed, and it is their source for placing reorders for the same merchandise.

Q. The buyers would normally keep them accurately?—A. Yes; they would definitely keep them as accurately as possible.

Q. So you felt justified in relying upon the buyer's pink sheet of confirmation to get an accurate statement of this information?—A. I did.

Q. How long did you give the buyers to return this information to you?—A. I believe the time limit was 48 hours. It was 48 hours in which to return it.

252 Q. How were these physically handled in the store?—A. They were physically handled by being turned over to the merchandise man, and the merchandise man in turn distributed it to the buyers under their supervision.

Q. Would you explain to the Court what a merchandise man is?—A. A merchandise man or merchandise counsel is responsible for the merchandise that is carried in several or a certain number of departments within a store. Buyers are responsible to him, and the merchandise men must O. K. their orders and give various other approvals of their merchandise policies. These merchandise men are responsible for the showing of each of their departments.

Q. Are they called merchandise men or merchandise managers or merchandise counsellors?—A. Any one of the three, but we refer to them as one, whichever name is usually used. Merchandise counsellors is one terms that has been used, and merchandise men also. Merchandise managers is the third.

Q. If you refer to this merchandise manager or merchandise men or merchandise counsellor, you refer to the same people?—A. Same person.

Q. Why did you limit the time within which they should be returned to 48 hours?—A. The reason being that we
253 knew there was a great deal of records to be written up, maintained, and a great deal of work in getting our prices back to the March ceiling prices, and time was going to be one of the important factors.

Q. And 48 hours you thought would be——A. Was all we would allow them.

Q. In other words, you testified, I believe, there were two possibilities by which prices could get up. One was this order at a higher price. What was the other?—A. The other was a mark-up taken by the department after March.

Q. Do you recall this bulletin having been issued?—A. Yes, I do.

Q. Would you explain to the Court the purpose of that bulletin?—A. The purpose of this was to control any mark-ups taken as of the effective date of this bulletin, which was April 30, so that no mark-up could be taken by the store which would increase a price over a March ceiling price.

Q. That would give you a control of the mark-up?—A. That would give us a control of the mark-ups after the date of the bulletin.

Mr. Horsky. I offer this in evidence as Defendant's Exhibit B.

(The Document was marked "Defendant's Exhibit B" and received in evidence.)

254 By Mr. Horsky:

Q. I hand you another bulletin dated May 1, and ask you the purpose of that bulletin.—A. This bulletin was to

gather together knowledge of all outstanding orders which had a price or a cost to the Hecht Company which was higher than the cost in March or prior.

Q. What would be the effect of having that information?—A. The effect was so that this merchandise coming into the store could be marked at a March ceiling price and not a price higher than the March ceiling, based on a new cost price after March.

Q. Where would the buyers get the information from which to fill out this bulletin?—A. This bulletin would also be filled out from their pink confirmation sheet.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit C.

(The document was marked "Defendant's Exhibit C" and received in evidence.)

By Mr. HORSKY:

Q. How long did you give the buyers to fill out that bulletin, Mr. Levi?—A. The time on that bulletin was 48 hours also.

Q. Were they generally returned about the time that
255 you specified at this period?—A. Generally; yes.

Q. I hand you, Mr. Levi, a copy of another bulletin known as OPA Bulletin No. 3 and Form No. 3 dated—without any date, and ask you what the purpose of that bulletin was.—A. The purpose of this bulletin was to get a record of mark-ups which were taken after the March base period. These mark-ups would have been taken during April up to the time that this bulletin was issued.

Q. I notice that the first paragraph states, "Attached are all the mark-up reports made during April for the departments in your group." What were those that are referred to in that paragraph?—A. The mark-up is whenever a buyer wishes to increase the price of any article it must be made out on a mark-up report, and submitted to their merchandise manager. He in turn approves it, and it goes through the recording process of the Hecht Company. The merchandise is marked up to a higher price.

Q. Where would you get the material to attach to this bulletin? Is there a central figure that is for all mark-ups?—A. Yes. All mark-up reports are finally filed by the Statistical Department.

Q. Are they filed by departments?—A. They are filed by departments.

Q. And did you attach to the bulletins to the merchandise
manager the actual mark-up reports that were on file
256 in the store for his department?—A. For his department; yes.

Q. What were the instructions in Paragraph 2? Will you read that to the Court, please?—A. May I say that this is addressed to the merchandise manager who is to "Review them with each buyer in your group. If the mark-ups are such that it will not be necessary to make a price reduction to comply with the general price regulation, mark it to comply with price regulations in the upper lefthand corner, date it, and sign them. Each merchandise manager must countersign it."

Q. You had better continue.—A. "If only certain items on the mark-up report comply with the price regulations, indicate which ones do. Where the mark-up price does not comply with the maximum price regulation, fill in the attached form and return both the mark-ups and the forms to the Comptroller's office within 48 hours."

Q. And the form attached is the form which they were to fill out?—A. Yes.

Q. For mark-ups that required adjusting?—A. That is correct.

Q. I notice in the upper righthand corner of this it is called OPA Bulletin No. 3. That means it is the Hecht
257 Company Bulletin No. 3?—A. Yes.

Q. That is not an official bulletin?—A. That is not an official bulletin. It is our own store bulletin.

Q. And it was known in the store as OPA No. 3?—A. Yes, it was.

Mr. HORSKY. I offer these in evidence as Defendant's Exhibit D.

(The document was marked "Defendant's Exhibit D" and received in evidence.)

By Mr. HORSKY:

Q. How long were the buyers given to fill out this OPA No. 3?—A. That was 48 hours also.

Q. How many, as near as you can judge, of the items which would be in the store would have been marked up in the period from March 31 to May 1 or about then when this bulletin came out by percentage?—A. A very small percentage, 1 or 2 percent I would say.

Q. In other words, it was possible to do in 48 hours?

A. Yes, it was.

Q. What happened after you received this information called for on the form attached to OPA No. 3? What did you
258 do with it, or the Price Control Office do with it?—A. Well, we then analyzed it to see that every mark-up that had been taken which put it above a ceiling price would be marked down. The mark-ups were checked out by the Sta-

tistical Department and checked in to make sure that all mark-ups were given out and that all mark-ups were returned to the Statistical Department.

Q. I hand you, Mr. Levi, a copy of what is marked OPA Bulletin No. 5, and ask you what the purpose for that bulletin was? Did it have something to do with the procedure which you just described of getting the prices down to the March prices?—A. Yes; in order to set up a separate method of showing the mark-down we took a mark-down book and stamped it. A cancellation of mark-up is the title, and the cancellation of mark-up was used to reduce any prices that were then selling above the March prices as stated by the general maximum regulations, to reduce them down to the regulations price.

Q. Then the information—physically how did the information get to the people in the store who were to mark down the goods? Could you explain the procedure in the store whereby the actual item on the floor would be changed as a result of your investigation that you have heretofore described?—A. Well, after the list had been returned to the price control section, the mark-ups and the lists which showed what mark-ups had to be reduced were returned to the buyers, and
259 from those actual mark-ups which raised it above the March price, they made a cancellation of the mark-up.

Q. From the way that you have described attached to this exhibit?—A. Correct.

Q. Then what happened?—A. And that cancellation of mark-up was signed by the buyer and the merchandise manager, and I am not positive of this, but I believe it is accurate, it was then sent to the marking room like any other mark-down. The goods would either be remarked on the floor or would be removed off of the floor to a marking room and marked according to the corrections as shown by the cancellation and mark-up.

Q. Would you explain to the Court in general how goods are marked in the first instance when they come into the store? Assume that it is a blanket, and the confirmation indicated that it is to be sold at $5.00. Would you explain how the blanket got on the floor with the $5.00 price on it so the Court will understand the procedure?—A. The confirmation and the invoice from the company are matched together, and upon checking the price both on the confirmation and invoice, the blanket is received. The blanket then is put into a marking room with the invoice and confirmation. The price is ticketed on to a ticket and placed on the blanket from that confirmation and then sent——

260 Q. That is a separate department of the store?—A. That is a separate department of the store.

Q. Now, if there is a change in price after the merchandise is on the floor, such as a mark-up or mark-down, would you explain to the Court in the normal case how that would be handled?—A. The mark-up or cancellation of mark-up or mark-down would be handled by the buyers.

Q. You are talking about the form now?—A. The form, yes.

Q. The mark-up form?—A. The mark-up form would be sent through the control section for merchandising, and then to the marking room, and that form when it got to the marking room would be their authority to take that merchandise and either remark it on the floor, or take it back to the marking room and remark it there.

Q. And it might be marked either on the floor, or taken off the floor and marked and put back on?—A. That is correct; yes.

Mr. HORSKY. I offer that as Defendant's Exhibit E, I believe.

(The document was marked "Defendant's Exhibit E" and received in evidence.)

By Mr. HORSKY:

261 Q. I hand you another bulletin from Mr. Davidow dated May 9. Let me ask you first who Mr. Davidow is.—A. Mr. Davidow is the general manager of the Hecht Company.

Q. Is or was?—A. Was.

Q. At that time?—A. At that time.

Q. What was the purpose of this bulletin?—A. The purpose of this bulletin was to correct the prices of any merchandise that was on hand that was selling above the March ceiling price, correct it to the March selling price according to the regulations.

Q. Would you read it to the Court, Mr. Levi?—A. "Upon receipt of this notice will you please arrange to correct the prices of any merchandise that you have on hand to the March ceiling price. 1. Be sure to use the cancellation of mark-up form in accordance with the instructions in OPA Bulletin No. 5. 2. Arrange to have the retail prices on all outstanding orders changed to reflect the maximum March ceiling price. This is important, because if you don't do it now it may necessitate a remarking when the merchandise comes in. 3. Beginning with Monday, May 11, 1942, manufacturers must bill you at a price not greater than their own March ceiling prices. It is extremely important, therefore, that you watch your invoices to make sure that your cost after May 11 conforms to

262 this rule. If, in your opinion, you feel that you are sustaining a hardship, contact the manufacturer and try to arrange for an adjustment. If you are unsuccessful then take it up with me."

Q. Now, at the time that—at this point the procedure had been to take care of changes in prices, prospective changes in prices; is that correct?—A. Correct.

Q. And you have testified that that would be a relatively small proportion of the items in the store?—A. That is correct.

Q. And the date of this—by May 9 you had probably taken care of that phase of the work?—A. That is correct.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit F.

(The document was marked "Defendant's Exhibit F" and received in evidence.)

By Mr. HORSKY:

Q. I hand you, Mr. Levi, a bulletin known as OPA Bulletin No. 4, and ask you what this bulletin was used for, was intended to be?—A. This bulletin was intended to explain and give all the information with reference to listing of the cost of living commodities.

263 Q. What phase of the regulation did it take into account, was it designed to meet?—A. It was designed to meet the phase which necessitated accumulation of our cost-of-living commodities records, and of the other items sold in the store during March.

Q. I hand you this form which is marked OPA 4, and ask you if that is the form which you distributed with this bulletin?—A. Yes, it is.

Q. Now, at the time that this bulletin was distributed do you recall what the regulations required with respect to listing? Would you just try and tell the Court in general what the provisions were that you were looking towards?—A. The instructions for filling out this form required that they name the article, the manufacturer, and the style number, description, including all essential details, definitely identify the article, such as material, size, workmanship, and style, give the maximum price of this article as of March, 1942, the present price of this merchandise on the floor, and whether the article was price tagged.

Q. I don't think you understood my question, Mr. Levi. I wanted you to tell the Court what the regulation was that this was designed to take care of.—A. This regulation was designed to cover the cost of living items which had to be listed and filed with OPA by June 1.

Q. When you say June 1, that was the original date of the regulation?—A. That was the original date of the regulation.

264 Q. Original date rather by which the items were to be filed according to regulation?—A. That is correct.

Q. It was subsequently changed to July 1?—A. That is correct.

Q. When was it changed? Was the change made before this came out or afterwards?—A. The change was made after this came out.

Q. So this was done in contemplation of a June 1 deadline?—A. That is correct.

Q. Do you recall whether you had any assistance, or whether you found this form anywhere, or how it was prepared, how the physical set-up of the form was arrived at? Did you make it yourself?—A. I made it myself, yes.

Q. It isn't an official OPA form?—A. No, it is not.

Q. It was not?—A. No.

Mr. HORSKY. I offer this in evidence as Exhibit G.

(The document was marked "Defendant's Exhibit G" and received in evidence.)

By Mr. HORSKY:

265 Q. Do you recall, Mr. Levi, attending a meeting of various persons at the Office of Price Administration on or about May 1?—A. Yes, I do.

Q. With whom did you go?—A. I went with Dr. David Craig, president of the American Retail Federation.

Q. And who else was at the meeting from the Office of Price Administration?—A. From the Office of Price Administration as I remember it, Mr. Lazerow, Mr. Fainsod, Mr. Coombs, Mr. Wells, and I remember that Mr. Henderson came in for a few minutes to make a short address.

Q. What was the purpose of that meeting?—A. The purpose of that meeting was to explain to all—to the American Retail Federation the method of the general maximum price regulation.

Q. Did you discuss at that meeting the nature of the listing requirement in connection with the issuance later on of this OPA form that you identified?—A. Yes, we did.

Q. Do you recall what the discussion was?—A. I am not quite clear on that question.

Q. That is was the question of how to list commodities discussed at the meeting, how to post commodities?—A. How to post commodities or how to list them?

266 Q. Both.—A. Well, how to post them was definitely

discussed, and how to list them, I feel confident that it was discussed, but I can't recall exactly how it was discussed, or what was said.

Mr. AUSTIN. If the Court please, I am going to object to this method of interrogation of the witness and the answers. We have allowed it to go along, but I think that the witness should be compelled to answer what he knows, not what someone else knows, and that counsel should be instructed to ask questions which are proper to ask upon direct examination.

The COURT. Yes. Well, I will ask the witness only to give answers from his personal knowledge.—A. Well, I will say this in fairness to myself. This happened many months ago. It is a little difficult, because since that time I have been doing other things.

The COURT. There is no harm in saying you don't know.

The WITNESS. That is what I would have to say.

Mr. GORDON. What was his answer? Isn't that what he said, that he did discuss listing, and he didn't remember about posting?

The WITNESS. No; I said this, that I don't know what they said about listings, but I do know that postings were very definitely discussed.

By Mr. HORSKY:

Q. Why did you go to this meeting, Mr. Levi?—A. I went to this meeting that—because Dr. Craig felt that he wanted someone there that had the retailer's point of view. I was invited to go as a member of the American Federation of Retailers, take notes with him, and help him in case I could be of any assistance to him.

267

Q. Was the meeting of educational value to you?—A. Yes; very.

Q. Did you have any merchandise clinics on these early forms; let's say Forms OPA 1 through 4?

Mr. AUSTIN. I am going to object to that, if the Court please.

The COURT. Let me hear that again.

(The last question was read by the reporter.)

The COURT. You may answer.

Mr. AUSTIN. Exception.

A. There was a definite meeting held with reference to OPA Form No. 4. The other meetings were held with the merchandise managers and their buyers, but on the OPA form—at the time we were ready to fill out that form we had a definite meeting of all the buyers, assistant buyers, and merchandise men at a clinic to discuss it.

By Mr. HORSKY:

Q. Who spoke at that meeting, at any one?—A. Mr. Weitzburg spoke at that meeting discussing OPA 1, 2, and 3, which was explained to them at that time. That sort of con-
268 tradicts my former statement, but he did explain 1, 2, and 3, and I spoke personally on Form No. 4.

Q. And what did you say as near as you remember? That is the gist of it.—A. Well, the gist of it was that the Form 4 had to be made out 100 percent accurately and carefully, that it was the permanent record by which we had to establish our maximum prices.

Q. This OPA Form No. 4 that we are speaking about is not an official form? That is the one you just described as a store OPA form?—A. It is the store form; yes.

Q. Did anyone else speak at the meeting?—A. Mr. Weitzburg, and I believe Mr. Dalton made a statement at that meeting, but I am not sure.

Q. Physically how did you deal with these OPA No. 4 forms? How did you transmit them to the buyers, and how did you route them through the store?—A. We routed them through from the price control office to the merchandise managers, who in turn gave the instructions, the list, and the forms over to their buyers. We kept each merchandise manager supplied with ample forms for his buyers to fill out.

Q. Do you know whether any meetings were held independently of these merchandise clinics on this OPA form?—A. Yes, there were. The managers held meetings of the
269 buyers under them in their groups.

Q. You attended those meetings?—A. I attended some of those meetings.

Q. And what did you do at those meetings?—A. I further explained the OPA form, cautioned them, told them if there were any questions that arose of which they were not sure of, I would help them the answer if I at that time knew.

Q. Will you explain to the Court how it might be—how it would be possible for different departments to have different questions with respect to this filling out of OPA 4, the manner in which it could be filled out?—A. Well, each department had its own problems when it came to the OPA Form No. 4. I am not quite sure exactly——

Q. The week record of each department is the same?—A. No, the records in each department were not the same. They have to go to various different records in order to ascertain the maximum prices.

Q. Would you explain to the Court what different kinds of records there might be in the various departments?—A. Well, the confirmation sheets retained by the buyers would be one

record they referred to. The sales check, as we said, which has been testified to, is another record by—which they could refer to. The usual sales check would not specifically tie a sale to an item, and would be of no value to a major portion of departments in a department store.

270 Q. Would you explain that in a little more detail as to what you mean by that, by the usual sales check?—A. Well, the usual sales check—it is the receipt that goes to a customer, and the piece of paper which a retail store does its accounting by does not carry a description by manufacturer, lot number, or anything other than the item, the name; maybe one shirt, or one handkerchief, and the price. This would not allow a sales check in the major portions of the store to be tied up against any ticket—I mean any particular item in the store.

Q. How long were the buyers allowed to fill out this OPA No. 4?—A. I believe we allowed them 48 hours, but found it was a physical impossibility to get them in at that time.

Q. Do you remember how long it actually did take?—A. Approximately six or seven days before all the forms were completed.

Q. Will you explain to the Court the difference between a cost of living commodity and a noncost of living commodity as you remember the regulations at the time?—A. Well,——

Mr. AUSTIN. I object, if the Court please. The law speaks for itself.

The COURT. That is defined by regulation?

Mr. HORSKY. I was just trying to get it clarified for the
271 Court. Your Honor, if you want me to read it, I will be glad to do it.

Mr. GORDON. Read the regulation. I have it. Just read it in evidence.

By Mr. HORSKY:

Q. Would you just read, Mr. Levi, section 13 of the General Maximum Price Regulation which deals—which is entitled "Maximum Prices of Cost of Living Commodities: Statement, Marking, or Posting?"—A. "For the purposes of this section, a cost of living commodity is any commodity designated as such by the Price Administrator. A list of the classes of commodities so designated appears in Appendix B of this Regulation.

"(a) On and after May 18, 1942, every person offering to sell a cost of living commodity at retail shall mark the maximum price of such commodity in a manner plainly visible to, and understandable by, the purchasing public. The maximum price may be marked on the commodity itself or on the shelf,

bin, rack, or other holder or container upon or in which the commodity is kept, or it may be posted at the place in the business establishment where the commodity is offered for sale. The maximum price shall be stated as follows: 'Ceiling Price $. . . .' or 'Our Ceiling $. . . .' Any person choosing to post by price-lines the maximum prices of commodities in the classifications marked by price-line—" I beg your par-
272 don—"marked by asterisks in Appendix B, shall post the maximum price by price-line at the place in the business establishment where the commodities in such price-line are offered for sale, and, in addition, shall mark the selling price of each such commodity on the commodity itself. On or before June 1, 1942——

Q. Excuse me. Wasn't the date subsequently changed to July 1?—A. That is correct.

Mr. GORDON. Do you want the original regulation changing it to July 1?

Mr. AUSTIN. You are doing the examining.

Mr. GORDON. Go ahead then.

A. "On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price Administration a statement showing his maximum price for each commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost of living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity."

Q. Will you refer to the appendix, Mr. Levi, and state what is the cost of living commodity referred to in the regulation you just read. You will find it on Page 16 of that book.—
273 A. "Commodities designated by the Price Administrator as cost of living commodities." Shall I also read the note?

Q. Don't read the note.—A. "Tobacco, drugs, toiletries, and sundries. All brands grades, and sizes except where otherwise indicated. Tobacco: Cigarettes, smoking tobacco in cans and packages. Packaged household drugs: Aspirin tablets; milk of magnesia, liquid; Cod liver oil, liquid; Epsom salts; Boric acid; Castor oil and mineral oil; witch-hazel and rubbing alcohol. Toiletries and sundries: Hand and toilet soaps, dentrifices, paste, powder, and liquid; shaving cream; toothbrushes; sanitary napkins; razor blades; facial tissues. Infants' food: All types. Ice cream: Bulk and packaged.

"Apparel and yard goods. Men's and boys' clothing: Suits, business and sport; overcoats, topcoats, and raincoats, business and sport; trousers and slacks, dress, sport, and wash; men's shirts, other than formal; pajamas and nightshirts, cotton, wool, and part wool; shorts, cotton; undershirts, cotton knit; union suits; hosiery, other than pure silk and pure wool; felt hats; work shirts; work pants; overalls and coveralls; sweaters; mackinaws, jackets, boys' only; men's work gloves; boys' gloves and mittens; boys' blouses and shirts; boys' snowsuits.

"Women's and girls' clothing: Coats, untrimmed and fur-trimmed, sport and dress; suits; dresses, street and house;
274 hosiery, including anklets; panties and slips; foundation garments and brassieres; women's gloves, children's gloves and mittens; skirts; blouses and shirts, tailored, rayon or cotton."

Mr. GORDON. Does counsel wish all this read, or shall we summarize it?

Mr. AUSTIN. I think it is entirely irrelevant. I think the Court can read this.

Mr. GORDON. You asked to have the original document produced, and we are doing it. We can either finish reading, or we can agree to what the substance of it is.

Mr. AUSTIN. I merely objected to his testifying as to what the law was.

The COURT. It is part of the regulation, isn't it?

Mr. AUSTIN. It is a part of the regulation.

The COURT. I see no reason for reading it.

Mr. HORSKY. No.

Mr. GORDON. I see no reason for reading the rest of it. We will simply ask the Court to take notice of the fact that these commodities are such things as apparel, yard goods, food and household supplies, household furniture, appliances, furnishings, hardware, agricultural supplies, ice; fuel and automotive, and a great long list of them probably—oh, my guess would be 100 articles.

By Mr. HORSKY:

Q. Many of these articles are sold in the Hecht Com-
275 pany, are they not?—A. Yes.

Q. And in many of the departments?—A. Yes.

Q. During the six or seven days that you testified that the forms were out and being filled out by the buyers, did you have any contact with the buyers yourself?—A. Yes. As much time as I had available I would spend going through the store checking with the buyers to see how they were making

out their forms, answering questions, and having them come to my office with their questions, or calling me by telephone to answer their questions.

Q. Were any instructions given by you to the buyers with respect to the priorities which this work should have over other work?—A. Yes; we stopped the buyers from doing anything except for this OPA Form No. 4. We allowed no buyer to leave the store without a signature from me, and no signatures were given during that period.

Q. What happened to the OPA Form No. 4 after it was filled out?—A. After the form was filled out it was reviewed by the merchandise managers, and then turned over to the price control office—price control division, and we in turn typed that list on to a form which was to be permanent, a permanent record.

276 Q. What was the form of the final form?—A. Well, it was typed in four copies, and the final form was to be placed in books.

Q. For purposes of clarification, is this the kind of form that you refer to?—A. Yes; that is the kind of form.

Q. Was that an official form?—A. No; that was not an official form. It was designed by us.

Q. Are they printed or mimeographed?—A. They, I believe, were printed.

Mr. JAMES. Do you want to let the record show what exhibit he is talking about, Mr. Horsky?

Mr. HORSKY. Exhibit 38.

By Mr. HORSKY:

Q. After these were typed, what happened to them, Mr. Levi?—A. After they were typed they were turned over to the managers, merchandise managers, and then to the buyers for the buyers to check their forms against the original thing for errors that may have occurred. They were then required to testify that these lists were correct, swear to it, and the merchandise manager also.

Q. How many people did you have working for you at that time?—A. Well——

277 Q. Under your supervision.—A. Under my supervision we had seven people typing, but actually the entire group of buyers, assistant buyers, and merchandise men were under my supervision compiling the OPA records.

Q. Where did these four copies go after they were finally typed, checked and returned to you?—A. One copy was to go to the OPA office according to the rules and regulations. The

second copy was to be retained for your own files in the office. The third copy was to be returned to the merchandise manager, then to the buyer accordingly, and the fourth copy we had planned to use originally as our method of posting the prices within the store.

Q. Do you recall, Mr. Levi, why it was that you began working on the cost of living commodities before you worked on the other noncost of living commodities?—A. There were two reasons, first that we had to have it in by June 1 whereas the other commodities did not have to be in until July 1; and secondly, due to the fact that under the original premise that we could post our list, which would be considered posting of prices in book form, we had to have our books ready by May 18 in order to get that—to complete that requirement.

278 Q. May 18 was the effective date?—A. Of the regulation.

Q. After you had finished this work on the cost of living commodity you started to work on the commodities other than the cost of living commodities, is that correct?—A. That is correct.

Q. I hand you a form which is a green paper, and ask you what that form was supposed to be.—A. This is a hardship form.

Q. Excuse me. I have the wrong one. What form did you use to fill out for the noncost of living commodities?—A. The noncost of living commodities was on an identical form to OPA No. 4 only that it was mimeographed on yellow paper instead of white.

Q. And in all respects it corresponded with Defendant's Exhibit G except that it was on different colored paper?—A. Yes. Is G OPA Form No. 4?

Q. That is right.—A. Yes; that is correct.

Q. What was the procedure used with respect to—first let me ask you this. Were these two forms to be filled out contemporaneously or not?—A. No; they could not be.

Q. When did you first distribute the OPA yellow form, OPA 4 yellow forms?—A. It was approximately six days

279 after—six or seven days after that the No. 4 white forms for the cost of living commodities were completed.

Q. What happened after they were completed?—A. They were turned in, not typed, but turned in to the price control office, which would bring it—I will have to figure it out—I guess somewhere around May 15 or so, wouldn't it?

Q. What was the procedure following the distribution of these forms?—A. These forms were handled exactly as the OPA No. 4 cost of living commodities were handled, and sent to the

merchandise managers, who in turn distributed them to the buyers to be filled out.

Q. How long did you give the buyers to fill out these forms?—A. I don't remember the exact length of time we gave them to fill them out.

Q. They were due to be finished by what date? I mean they were required to be posted or compiled on what date?—A. By July we had to have them filed.

Q. Let me ask you a question about the reasons why you did it this way. Do you recall, Mr. Levi, whether—do you recall why you asked—you decided to have the buyers fill out these forms instead of someone else?—A. Yes. The buyers
280 were the only people—the the only people in a store who know their merchandise well enough to identify it by picking it up off the table or by seeing the merchandise. If another person looked at a pajama on a table they would not know whether the pajama came from any one of a dozen manufacturers unless the pajama carried a definite label in it. Some of the merchandise does carry labels and others do not. In order to properly identify the merchandise the only person who would be familiar enough with it would be the person who buys it in the market.

She knows usually, or he knows where it came from, or has some idea unless the item has been on the floor for any great length of time, or is an old item, or for some reason she just cannot tie the item that she sees up against where she bought it in her mind.

Q. There might be some items which even the buyers wouldn't be able to identify?—A. It would be very simple for some items to be on the floor that the buyers could not identify.

Q. Do you recall this: whether that was the basis of the judgment you exercised at that time to have the buyers do it?—A. Yes, that was the judgment we decided on.

Q. Mr. Levi, do you recall the issuance of Maximum Price Regulation No. 142?

Mr. Austin. I object on the ground that is entirely
281 irrelevant, if the Court please, and immaterial.

The Court. You may answer.

A. OPA General Maximum Price Regulation No. 142 was the price regulation——

By Mr. Horsky:

Q. First, do you recall when it was issued?—A. Somewhere around May 12 or 15 I would say. It is for the pricing of summer seasonal goods.

Q. Will you read for the Court—Your Honor, I will help you find it.

The COURT. No; that is all right. Go ahead.

Q. Will you read for the Court the text of the Regulation. Paragraph 1372.2b which indicates what commodities that regulation is applied to.—A. "Any commodity which falls within any of the following classifications designated as seasonal commodities, women's and boys' clothing. (1) summer suits and separate sack and sport coats which are washable."

Q. Perhaps, Mr. Levi; if you read the major titles it would simplify it.—A. "Men's and boys' clothing, women's and girls' clothing."

Q. You better read all the miscellaneous.—A. "Infants' clothing, furniture and toys and miscellaneous such as awnings, boats, electric fans and ventilators, flower boxes, holiday
282 novelties for holidays, picnic baskets, screen doors, window screens and screen sold by the foot, shades, wooden, for porches, sprinklers for waterings lawns, sun glasses, trellises, and arbors, wooden, and insecticides.

Q. Would you refer to the first page of this Regulation and tell the Court the date on which it was first isued, first occurred in the Federal Register, I should say.—A. Issued May 12, 1942. Federal Register, May 14, 1942.

Q. Do you recall the issuance of that Regulation?—A. Yes, I do.

Q. Do you recall what the effect of that Regulation was upon the work that was being done in compliance with or in-filling out these forms?—A. Yes. At the time that this Regulation was issued we had begun our work on the nonfood of living commodities list which had to be completed by July 1. This interrupted it, and we had to stop on the nonfood of-living commodities list which had to be filled out by July 1 and immediately go to preparing the summer seasonal prices under this new Regulation.

Q. This Regulation applied to many departments of the store?—A. Yes; quite a number of departments in the store.

Q. I will hand you a bulletin dated May 15 and ask you what that bulletin was intended to do.—A. This bulletin was to inform the buyers, the merchandise managers of the stor
283 as to exactly what constituted a seasonal commodity.

Mr. HORSKY. I offer in evidence, Your Honor, Exhibit H.

(The document was marked "Defendant's Exhibit H" and received in evidence.)

By Mr. HORSKY.

Q. I hand you a bulletin which is marked OPA No. 8 dated May 22, and ask you what bulletin was designed to do.—A. This bulletin set up the method by which the price should be fixed for summer seasonal commodities, and at the same time there were forms supplied with this for them to fill out, each item coming under the Summer Seasonal Commodity Regulation.

Q. Would you read beginning with Paragraph 2 to the Court, explaining how the prices were fixed?—A. "It is advisable to price all seasonal commodities wherever possible according to the March price ceiling under the General Maximum Price Regulation. You may use as a basis for your price the same article sold or offered in March, similar articles sold or offered, or similar articles sold or offered in a closely competitive store.

"The seasonal goods are priced by any of the following methods: 1. OPA Form No. 7 must be made out for each such item priced. The method for arriving at the maximum price for summer seasonal commodities which cannot be priced under the General Maximum Price Regulation is as follows:

284 You must take the lowest cost price as fixed by the average cost to you of the commodity in purchase made between the close of last year's summer selling season and the opening of this year for May 11, 1942, whichever date is latest, or the national price which you would have to pay to replace the commodity after May 11, 1942, this being at most the highest March price to which the manufacturer and wholesaler are tied by General Regulations.

"Example A.—Bathing suits. Since the close of last year's season you made two purchases of bathing suits. The quantity of the first purchase was 100 suits at $4.00. The second was 10 suits at $4.50. To arrive at the average the total cost of each bill, which would be the first purchase $400, and the second purchase $45.00—you add the two together, and divide by 110, which will give you the average cost of $4.05, or.

"Example B.—The price after May 11 for which you could purchase the same suit as in Example A is $4.00. Therefore you take the lowest price, which is your present replacement value of $4.00 as compared with your average cost of $4.05 as the cost on which you can take your mark-up as follows: On this cost you take your last year's average mark-up on the same commodity. If you are able to establish this average commodity mark-up, then you use the average mark-up for the department in which you sold the same or similar commodity during the last summer selling seasons.

285 "As an example, based on your invoice of last year and on your other records you find the mark-up on bathing suits to be 41 percent, you would then take a 41 percent mark-up on your cost of $4.00, which would be $6.78 selling price. However, if you customarily sell more than five percent of your annual sales of seasonal commodities during March, you must disregard the above Regulation and use your March ceiling price on the commodit*ify*, for if you sold any of—or if you sold any of the commodities in March without any undue hardship, you must use your March ceiling price."

Mr. AUSTIN. Just a minute. I think you misread that.

The WITNESS. "Or if you sold any of this commodity in March without any undue hardship, you may use your March ceiling price." Is that right?

Mr. AUSTIN. You used the word must.

A. "Included in the instructions is a copy of the form which you will use in pricing all seasonal commodities, and your merchandising manager has the supply of these forms. A separate form must be made out for each item which you priced under this Regulation, and when completely filled out and signed by the buyer and merchandising manager, it is to be sent to the Price Control Administrator, Robert H. Levi.

"It will be necessary for you to refigure the retail price of any seasonal commodity which comes under the attached list, and which is not priced as per a March ceiling under the
286 General Maximum Price Regulation as one of these forms, as we must prove to OPA how we establish a retail price. Return these forms within 48 hours to Price Control Administrator, Robert H. Levi."

Mr. HORSKY. I offer this in evidence, Your Honor.

(The document was marked "Defendant's Exhibit F" and received in evidence.)

The COURT. We will suspend now, and be back at 1:30.

(The Court was adjourned at 12:40 p. m.)

287 AFTERNOON SESSION

(The hearing reconvened at 1:45 o'clock p. m.)

The COURT. Very well, gentlemen, you may proceed.

ROBERT H. LEVI resumed the stand and testified further as follows:

Direct examination (continued) by Mr. HORSKY:

Q. Mr. Levi, before the lunch hour, you were describing the procedures by which you arrived at prices under General Max-

imum Price Regulation 142 dealing with summer commodities and you read a bulletin which was attached to a form. Is that the form and bulletin to which you referred?—A. Yes, it is.

Mr. HORSKY. I offer the exhibit just identified by the witness as Defendant's Exhibit J.

(The document referred to was marked for identification as "Defendant's Exhibit J" and received in evidence.)

By Mr. HORSKY:

Q. Mr. Levi, what was the effect of the issuance of Bulletin 8 and the forms that went with it on the work that was being done in the store in filling out these OPA No. 4 yellow sheets?—A. The effect was twofold: first, that we had to stop on the OPA No. 4 yellow sheets for all commodities which were
288 not cost-of-living commodities; and, secondly, a great deal of confusion resulted due to the fact that the two regulations, the General Maximum Price Regulation and the Summer Seasonal Regulation, were on entirely different bases. The Summer Seasonal was on a percentage mark-up, whereas the General Maximum was based purely on similar goods or the same goods—in other words, tying up the quality—whereas, the other was a cost formula plus a mark-up.

Q. Did you have meetings with respect to Summer Seasonal Regulation of either the merchandise clinic or of some other groups?—A. Yes; as I remember.

Q. Do you recall those meetings?—A. Yes. There was a meeting held with the merchandise managers—I think the total number was about eight—at which time we spent three hours going over this regulation—approximately three hours—trying to explain it to them. There were a number of questions which I could not answer at the time, and even with that small group I immediately saw that they were quite confused on it; so I said that I would try to get the answers and have a meeting two or three days later. I believe it was about two days later that we had our second meeting.

289 Q. Of the same group or with the buyers?—A. Of the same group with the buyers. At that time we explained it to the merchandise men again and to the buyers, and at that time who had a question and answer period. I saw that from the questions asked that the buyers had not grasped this regulation and they could not carry it out at that time.

Q. It was subsequent or prior to the issuance of the OPA form 8 which you identified?—A. I believe the meeting was prior to the issuance of OPA form 8.

Q. What is OPA form 8? Was it brought out as a consequence of a meeting?—A. Yes; I would say it was.

Q. Mr. Levi, as I understand your testimony to date, you have been speaking of OPA form No. 4, which is a store form; is that correct?—A. That is correct.

Q. It is not a copy of a Government form?—A. No copy.

Q. And the form was prepared by yourself?—A. Correct.

Q. That form, you testified, was designed to list the commodities. Explain to the Court what commodities were to be listed on that form with respect to the date upon which they were in the store or the date upon which they had been
290 sold—matters of that sort. Was it a particular time; was it a particular period?—A. Yes. The OPA forms——

Mr. AUSTIN (interposing). Just a minute. May I ask a question? Are you referring now to the yellow or the white?

Mr. HORSKY. I am referring to the white at the moment—the cost-of-living commodity form.

The WITNESS. The cost-of-living commodity form was to show everything in the base period of March that was sold in the store and as far up to the time that the forms were made for the cost-of-living commodities, tracing them back to the March basis for their price.

By Mr. HORSKY:

Q. In other words, it would be a list of the cost-of-living commodities sold in March and April approximately?—A. That is correct.

Q. Now, what did you do, Mr. Levi, with respect to keeping that list current?—A. It was then the problem, from the time that the white OPA form No. 4 was completed, of keeping a running record of all incoming cost-of-living commodities and form No. 7, OPA No. 7, was prepared in order to keep the incoming commodities properly priced according to the regulations.

Q. I hand you, Mr. Levi, two sheets, both referring
291 to OPA form No. 7, one being a bulletin and one being a form, and ask you if that is the OPA form No. 7 that you were referring to just now?—A. That is.

Q. The purpose was to keep the prior lists current?—A. To keep the prior lists current.

Q. Was that form also to be applied to the noncost-of-living commodities?—A. This list here [indicating]?

Q. The OPA 7—was it intended to supplement both lists?—that is, the list of the cost-of-living commodities and the list of noncost-of-living commodities—or was it designed only to take care of cost-of-living commodities?—A. I am not sure of the answer to that. I don't remember. It is too far back.

It may be in here. I would like to look. It seems to be for all.

Q. You say it seems to be for all?—A. Yes.

Q. Would you read?—A. "One copy of OPA form No. 7——"

The COURT (interposing). Pardon me. Is the occasion for reading these forms to go into the record?

Mr. HORSKY. I wanted to be sure Your Honor understood them. That is the only purpose; so that you could
292 ask the witness questions if it wasn't clear to you as he ran through it. It is as you wish.

The COURT. Go ahead.

By Mr. HORSKY:

Q. Go ahead.—A. "One copy of OPA form No. 7 must be made out for each article which you still have in your department at the present time, purchased after March 31 and which was not sold or offered during March 1942. It is necessary for you to show on this form how you established your price for every item that you did not sell or offer in March and on which you placed a retail price after the base period of March. We suggest that you come to the Accounts Payable section and review the purchase record of your department. From this record you will be able to check all purchases which you made since April 1, and by that means you will be able to refer to other records in order to make out this report.

"The OPA does not consider it satisfactory to price a piece of merchandise after March according to our usual mark-up. It must be priced according to the rules and regulations they have laid down and of which you have a copy. Thus it is necessary to review and show how we priced all merchandise purchased after March 31 which was not sold or offered in March.

"We have given you a pad of 50 forms. Use one form for each item and upon the completion of this report send
293 to Robert H. Levi. Fill in all the information you can and the Price Control Office will complete any form that you cannot.

"On the bottom of form No. 7 are some instructions which do not apply to merchandise which has been received between March 31 and the present time. The instructions on the bottom refer to the future use of form No. 7 for all future purchases of new items which you must price according to the established rules. Be sure that you enter the department number and your signature on every form.

"If there are any questions, kindly see your merchandise

manager who will be able to give you the necessary information.

"Should any item be retailing at too high a price, see your merchandise manager and immediately make out a mark-up cancellation."

Q. Does this refresh your recollection, Mr. Levi, with respect to the period for which these forms were to be made out?—A. Yes; I can make a clearer statement as to OPA form 7.

Q. State it as you now understand it after having read this [indicating].—A. In order to gather together all loose ends of incoming material since March 31, any material that had come in during that period was to be reported on these forms, and, secondly, the form was to be used for all future incoming
294 shipments to report how they placed the price on it.

Mr. HORSKY. I offer this Bulletin and the accompanying form in evidence as Defendant's Exhibit K.

(The document referred to was marked for identification as "Defendant's Exhibit K" and received in evidence.)

By Mr. KORSKY:

Q. Mr. Levi, just so we can tie the matter up, do you remember what exhibit that is?

Mr. HORSKY. Can you remember the number of the exhibit?

The CLERK. Here it is; four.

By Mr. HORSKY:

Q. This Plaintiff's Exhibit 4 is a revised edition of the same form about which you have been speaking?—A. That is correct.

Q. Did you make that revision, Mr. Levi?—A. No, I did not.

Q. To go back to the OPA form No. 4 for a moment, will you refer to the General Maximum Price Regulation and read to the Court the instructions for filling out the list in paragraph (b) of Section 13 as to how the list was to be made up?—A. "On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price
295 Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost-of living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity."

Q. That is sufficient, Mr. Levi. Did you experience any difficulty in interpreting, at the time that you made out these OPA forms, the phrase which you just read—"an appropriate description or identification of the commodity"?—A. Yes, there was difficulty on that point.

Q. Would you explain to the Court what the difficulty was and how it arose?—A. At that time we were not aware of any interpretations having been made by OPA as to what constituted an appropriate description or identification, and it was not until sometime later that we did receive information about that point; so that we used our best judgment which we thought was adequate for the purpose of the description and appropriate.

Q. I would like to ask you to refer to Bulletin No. 2, which is an Office of Price Administration bulletin entitled, "What Every Retailer Should Know About the General Max-
296 imum Price Regulation," and indicate to the Court what that bulletin stated or implied with respect to the manner of listing.

Mr. AUSTIN. Where is he reading?

The WITNESS. Page 28, paragraph B. This gives explicit instructions: "Every retailer must file a statement of his ceiling prices for all cost-of-living commodities carried by him with the nearest War Price and Rationing Board by July 1" asterisk, note: "The date has been changed from June 1 as originally required by the Regulation."

"He should use his own paper in standard letter size (8" x 10½") and the statement should preferably be typewritten, but if typewriter is not available, carefully written in ink." Do you wish me to skip part of this?

By Mr. HORSKY:

Q. Just read the part that refers to appropriate description.—A. "The maximum price must be listed for each cost-of-living commodity sold by the retailer. One entry for a group of identical items is sufficient. Each item of merchandise must be sufficiently described by such means as brand, grade, size, manufacturer's name or code number, the retailer's own lot number, or other means so that the merchandise can be identified in his store."

297 Q. That is enough, I think, Mr. Levi. Do you remember the date that this bulletin came out?—A. The date, I believe, was May 22, but we did not get our copies till approximately May 25. I believe those are the correct dates.

Mr. HORSKY. Your Honor, I think it is not necessary to offer this in evidence. It is an official bulletin of the OPA and it is on your desk.

The COURT. Yes.

By Mr. HORSKY:

Q. Mr. Levi, I hand you a bulletin dated May 8 and a form attached to it called "OPA Bulletin No. 6." I ask you first whether that is a store bulletin or an OPA bulletin.—A. Yes; this is a store bulletin.

Q. And a store form?—A. A store form, correct.

Q. Would you tell the Court the purpose of that bulletin?—A. Yes. In conjunction with OPA form No. 4 there was bound to be some articles which, because of the so-called squeeze, were going to be sold at a hardship, which means a lower price than a retailer usually gets for that article. These hardship cases would mean, sometimes, that we were selling the item at less than would be profitable. In other words, some items in
298 the store were unprofitable to sell. In order to find out these items, we had each asterisked by the buyer when he made the OPA form No. 4 and, again, report it on this OPA form No. 6—those articles which were hardship cases.

Q. There was a provision in the regulations which allowed an application to the OPA to adjust the prices of those articles?—A. That is correct.

Q. That was designed to get the necessary information for making that application?—A. Correct.

Mr. HORSKY. I would like to offer this bulletin and the form in evidence as Defendant's Exhibit L.

(The document referred to was marked for identification as "Defendant's Exhibit L" and received in evidence.)

By Mr. HORSKY:

Q. Do you know, Mr. Levi, whether any such applications were made by the Hecht Company?—A. To my knowledge none was made by the Hecht Company.

Q. Can you say why?—A. We just did not have time.

Q. I hand you another bulletin, Mr. Levi, dated May 16 and marked "OPA #9," and ask you what the purpose of that
299 bulletin is.—A. This was another reminder to all people buying merchandise and determining prices as to how to determine their maximum prices and ceiling prices.

Q. This information had already been distributed orally?—A. It had been treated orally and they had a copy of the General Maximum Price Regulation.

Q. This was distributed to whom?—A. This was distributed to all merchandise managers and buyers.

Q. I think it would be helpful to the Court if you would read enough to illustrate the five different ways in which merchan-

dise may be priced under the General Maximum Price Regulation.—A. "There are five possible methods."

Q. Don't bother reading the illustrations; just the methods.—A. All right.

"Method 1.—You take as the ceiling the highest price at which the article being priced was delivered to a customer in March. It doesn't matter when a sale was actually made. Delivery counts. You can't use a price charged in March if delivery wasn't made until April. You can use a price charged in February if delivery was made in March."

"Method 2.—In pricing an article which you did not
300 sell in March but which you regularly offered in stock during that month, use your highest offering price for March delivery."

"Method 3.—To price a new product similar to one sold or offered for sale during March, you use the ceiling of a similar product. One product is deemed 'similar' to another if it has the same use, affords fairly equivalent serviceability and belongs to a type which ordinarily would be sold in the same price range. Differences in style and design which do not substantially affect use or serviceability or the price at which the product would ordinarily be sold should not be taken into account."

"Method 4.—If you did not sell or offer for sale the same or similar article in March, you must use the maximum price of your 'most closely competitive store of the same class.' The other store must handle the same article, be of the same class (department store or specialty shop in the same class as your department) and it must be the nearest store competing in the sale of the same or similar articles."

"Method 5.—If no other method applies for pricing a commodity, you select from the same general classification and price as the commodity to be priced the comparable item which already has a maximum price. Divide the maximum price of the comparable item by the replacement cost of the comparable item and then multiply this result by the cost of the new
301 item. Your final figure is the Retail Ceiling Price for your new item."

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit M.

(The document referred to was marked for identification as "Defendant's Exhibit M" and received in evidence.)

By Mr. HORSKY:

Q. Mr. Levi, I hand you another bulletin, in two sheets, and ask you if this is the method or form by which the fifth method was to be carried out—that is, articles which could not be compared with an article sold in March, either in your store or a

similar store.—A. As I understand it, this is the form [indicating].

Q. Will you explain to the Court what that form is and how it operates? This is an official Government form, is it not?—A. This is an official Government form.

Q. This is not a Hecht Company form?—A. This is not a Hecht Company form.

Q. It was mimeographed by you from an official Government form?—A. That is correct. You must first fill in the name of the company and the address.

302 "If report is filed for more than one store indicate here or on attached sheets the stores included or the area covered.

"The undersigned hereby reports its determination, made in accordance with section 1499.3 (a) of the General Maximum Price Regulation, of the maximum price for the commodity described in item 1 below."

Q. I would rather not have you read it, Mr. Levi, but explain to the Court so he understands how it does work—that is, the general nature of the figures required and the calculations required and the like.—A. In order to price under the fifth method, you must select a comparable item in the same department, and after selecting that comparable item, you must take that unit or that item which is turning over or is sold the most number of times. After taking that particular comparable item, you find out from the manufacturer of that item what it would cost to replace it at the present time and what your maximum price is under the ceiling. You divide your replacement cost into the maximum price that you have established and you get a resulting percentage. You then take the article which you wish to price and multiply it by this percentage. The dollar value that you get is the price for your new article, and that is what is done here in a different form.

303 Q. These forms are filled out for each article thus priced, are they not?—A. Yes.

Q. What happens to that form after it is filled out?—A. It must be forwarded within ten days to the OPA.

Q. And what happens after they get it?—A. Well, I have never seen anything that says——

Q. (Interposing.) Do they ever come back with corrections?—A. Not that I have ever seen in writing.

Q. None that ever came back to you?—A. None that ever came back to me, no.

Mr. Horsky. I offer in evidence Defendant's Exhibit N.

(The document referred to was marked for identification as "Defendant's Exhibit N" and was received in evidence.)

By Mr. HORSKY:

Q. In speaking, Mr. Levi, with respect to that form, comparable commodities, could you indicate to the Court what comparable commodities might be referred to? Suppose that the Hecht Company had not sold stirrup pumps prior to this period and was then going to sell stirrup pumps. Would you just, for illustration, tell the Court how a comparable commodity was found?—A. Well, you first narrow it down to the department.

304 Q. What department would that be?—A. That would fall in housewares, probably, on the seventh floor. You would then pick an item that has some similarity or some comparison—perhaps a lawn sprinkler, a nozzle for a garden hose, or a pump, if you would have a hand pump of some kind, or a 2½-gallon sprayer pump with the tank. Pick any one of the items which you think is closest as far as comparison. You then take that item and find which unit among them is selling most rapidly, which we call turnover, and then that item is the one on which you have to base No. 5 as outlined.

Q. When you speak of comparable items, in referring to this method of pricing, the concept is different than the concept of similar items by pricing by comparing with the March item, is it not?—A. Yes.

Q. It is where the item is not sufficiently close to be similar that it becomes comparable?—A. That is as I understand it; correct.

Q. Every item must be comparable. There must be something you can compare with every item? It has to be priced?—

305 A. We say that there is but there have been very great stretches of the imagination to pull two items together sometimes.

Q. Do you recall, Mr. Levi, any difficulty with respect to the interpretation of this provision of the regulation, of General Maximum Price Regulation, dealing with same or similar commodities? Let me refer you particularly to Section 2(b), last paragraph, of General Maximum Price Regulation, which reads as you have described with respect to similar. Do you recall whether the interpretation of that caused any difficulty in the store at the time?—A. Yes; there was quite a bit of argumentation back and forth over this point. The definition is pretty loose, so to speak—at least in my estimation it is loose.

Q. Would you read it to the Court so he will understand?—

A. "One commodity shall be deemed 'similar' to another commodity, if the first has the same use as the second, affords the purchaser fairly equivalent serviceability, and belongs to a type which would ordinarily be sold in the same price line. In determining the similarity of such commodities, differences merely in style or design which do not substantially affect use, or serviceability, or the price line in which such commodities would ordinarily have been sold, shall not be taken into account.

One service shall be deemed 'similar' to another service
306 if the first has the same use and purpose as the second and belongs to a type which would ordinarily be sold for the same or substantially the same price."

Q. Let me ask you, Mr. Levi, that use of the word "similar" was to distinguish commodities which were not the same in the words of the regulation; is that correct?—A. Yes.

Mr. AUSTIN. Ask for his opinion on that Mr Horsky.

By Mr. HORSKY:

Q. I will ask you what part of the pricing mechanism was involved in the similar commodities.—A. Well, if it was not the same—if it was not the same identical commodity—it was the next question whether it was similar.

Q. If it was the same commodity?—A. It would have to take the price of that commodity.

Q. In March?—A. In March.

Q. If it was a similar commodity?—A. If it was a similar commodity, it would take the price of the similar commodity in March.

Q. Do you recall, Mr. Levi, whether questions came up with respect to whether a different style number would make a commodity a different commodity so that it would no longer be the same but only similar?—A. Yes. It came up.
307 There was no interpretation at the time. We had to make our own decision.

Q. Would you explain to the Court how it is possible in a store for a commodity to be the same, using it not in the legal sense but loosely, and still of a different style number?—A. Yes. You could have three identical dresses with the exact same style with a different color, and each one, therefore, would take a different lot number from a manufacturer. The question was whether they are identical or different dresses. We considered them identical because the material was the same, the workmanship was the same. The only difference was the color. That is one type of difference that comes up.

Q. Would the same be true of many commodities in the store?—A. Quite a number of ready-to-wear commodities particularly.

Q. I hand you, Mr. Levi, a bulletin which is from Mr. Davidow, addressed to the associates. Do you remember receiving that bulletin?

Mr. AUSTIN. May I have the number of that, Mr. Horsky?

Mr. HORSKY. I don't know whether you have it or not.

By Mr. HORSKY:

308 Q. What is the date of that one, Mr. Levi?—A. The date is 5/16.

Q. March 16?

Mr. AUSTIN. March 16?

The WITNESS. May.

Mr. HORSKY. May.

By Mr. HORSKY:

Q. Do you recall receiving this bulletin?—A. Yes, I do.

Q. Would you explain—did you prepare it?—A. I would rather not say definitely whether I did or not. I believe that I did prepare it for Mr. Davidow's signature, but I am not sure.

Q. What was the purpose of this bulletin, if you know?—A. The purpose of this bulletin was that in case a buyer was questioned about the OPA regulation, rather than to give an incorrect answer if they were not positive, as Mr. Davidow said, they should turn the person over to someone else who did have the information available to give any person requesting it.

Mr. HORSKY. I offer it in evidence, Your Honor, as Defendant's Exhibit O.

(The document referred to was marked for identification as "Defendant's Exhibit O" and received in evidence.)

By Mr. HORSKY:

309 Q. I hand you another bulletin, Mr. Levi, also from Mr. Davidow, dated May 18, and ask you whether you received that bulletin?—A. Yes.

Q. Could you explain to the Court the purpose of that one?—A. This bulletin went out the morning that the Price Regulation went into effect, and the purpose was to inform people in our store when questions arose that we were complying and how to handle questions that arose about the price ceilings, to contact the buyer.

Q. Would you read that bulletin, Mr. Levi?—A. "The General Maximum Price Regulation, about which you no doubt already know, becomes effective today"

I would like to interrupt to say that this was to all associates of the store.

Q. What does that mean?—A. That means every person in the store was sent a bulletin.

Q. That was true of the prior exhibit, too, was it not?—A. I am not sure. I wouldn't know without seeing it.

Q. I will show it to you [handing to the witness].—A. No. This is only to "All Merchandise Managers, Buyers and Heads of Service Divisions."

310 Q. Thank you.—A. This says "All Associates." "The General Maximum Price Regulation, about which you no doubt already know, becomes effective today. The Hecht Co. is conforming wholeheartedly with the OPA Regulation on Price Control, and has established 'Ceiling Prices', based on our March selling prices, in compliance with this regulation. Questions, however, are bound to arise in reference to these Ceiling Prices or the Regulation.

"When such a question arises, please contact the buyer in your department for the answer; your buyer will either be able to give you the correct information or will find out from the proper people whatever you or your inquirer desires to know. If a customer asks you a question about the OPA regulations or the 'Ceiling Prices' and your buyer is not available at the time you should call our Store Price Control Administrator, Mr. Robert H. Levi, on extension 217, or his associate, Mr. Louis G. Etelson, on extension 235. Please do not attempt to answer any questions or complaints in connection with the General Maximum Price Regulations without first consulting your Buyer or the Office of the Store Price Control Administrator."

Mr. Horsky: I offer it in evidence as Defendant's Exhibit P.

(The document referred to was marked for identification as "Defendant's Exhibit P" and received in evidence.)

311 By Mr. Horsky:

Q. Now, Mr. Levi, that brings us up to about the date the regulation became effective. Do you recall the issuance of Price Regulation No. 153—"Women's, Girls', and Children's Outerwear Garments"?—A. Yes, I do.

Q. What date did that come out, referring to the bulletin here [indicating]?—A. Referring to this, issued May 23, 1942; Federal Register of May 26, 1942.

Q. Do you recall the time when this bulletin was issued?—A. Yes, I do recall.

Q. Do you recall how you got a copy of it—whether you got it from the Federal Register or whether you got it from the OPA?—A. On this particular bulletin, I believe it was from

the Federal Register or the American Retail Federation from which I received it.

Q. What did you do when this regulation came out with respect to this regulation?—A. First of all, this regulation was rather complicated and I tried to read it over and understand it thoroughly. I spent several hours of one day on it and was rather confused. I did not understand it.

312 Q. Did you have a meeting on it?—A. I am not positive, but I don't believe we did have any meeting because I don't think I understood it enough to have a meeting on it.

Q. What did you decide to do with respect to it, if you recall?—A. Well, it seemed to me that it was foolish to call up the OPA personally and try to get an answer because it was so involved a question, so I spoke to Miss Coles, of the American Retail Federation, who either had sent someone down there or who had called up.

Mr. AUSTIN. Objection.

The COURT. Yes; sustained.

By Mr. HORSKY:

Q. I don't think you had better testify to that. Just tell what you did yourself and not what conversation you had with Miss Coles.

Mr. GORDON. It is all right for him to say what she said.

Mr. HORSKY. It is proper for him to state what he did with respect to Miss Coles.

The COURT. He can tell what he did but not what he said in the conversation he had with somebody.

Mr. AUSTIN. Yes.

The WITNESS. I spoke to Miss Coles over the tele-
313 phone in reference to this order. After speaking with her I felt that it was useless for me to do any further work on it.

By Mr. HORSKY:

Q. Refer then to that CCH bulletin and read the next line.—A. The reason that I ceased to work further on it was simply that it was in such confusion in my own mind that I didn't feel anybody else could understand it either. hTe order completely revised June 9, 1942; Federal Register, June 10, 1942.

Q. At that time, were you still in the work in the Hecht Company on these OPA matters?—A. Yes. At the time it came out in revision?

Q. Yes.—A. I am not sure. It came out on June 10.

Q. In any event, did you work on it in its revised form?—A. No; I did not do any work on it in its revised form.

Q. Do you know from your own knowledge, Mr. Levi, what happened when this regulation came out dealing with women's and girls' outer garments with respect to the effect upon that particular branch of the retail garment trade?—A. Yes. I happened to be in New York shortly after this regulation
314 came out and before the revised came out. During that period I happened to be in sales rooms where these garments were controlled under this regulation. They could not quote prices and we could not buy at that point. As far as I can remember, everything came at a complete standstill. Nobody bought and nobody sold until the revised order came out.

Q. Do I understand you correctly? Perhaps I had better ask it this way: What was the effective date of this order when it first came out? Would you read paragraph 1389.1 to the Court?—A. "New lines of women's, girls', and children's outerwear garments subject to this Maximum Price Regulation No. 153, as amended. (a) This Maximum Price Regulation No. 153, as amended, shall apply, and, except as provided in Section 1389.4 the General Maximum Price Regulation shall not apply, to sales of any new line of any women's, girls', and children's outerwear garments delivered by the seller on and after June 15, 1942."

Q. Do you mean to tell the Court, in other words, that it was not your intention to ignore the regulation but that you could not understand it? That was all?—A. That is correct.

Q. It wasn't yet effective when you came to the con-
315 clusion?—A. It was not effective and we could not get the interpretation as to how to operate it, so I just had to let it stand.

Q. And it was revised later on?—A. Yes.

Q. Completely?—A. Completely revised on June 9, 1942.

Q. During this period, from the time that the General Maximum Price Regulation came out until you ceased active work as the Director of the Price Control Office, did you personally or have people under your supervision try to make checks of what the buyers were doing with respect to filling out these forms?—A. Yes. I tried personally to make spot checks.

Q. Which forms in particular did you use?—A. Particularly on the OPA-4.

Q. You did make spot checks?—A. Yes.

Q. What did you discover on those spot checks?—A. The spot check was very inadequate. There was just not enough time to do any spot checking that amounted to anything before more regulations were on us, so I only spot checked very few. The few I did spot check happened to be perfectly satisfactory.

316 Q. Did you find any mistakes at all?—A. I think I came only upon one debatable point which was proven to be correct by the buyer.

Q. What were your instructions with respect to debatable points?—A. Debatable points were always to be decided on the side of the regulation. If there was any question involved, take it the safe way.

Q. Those were your instructions to the buyers?—A. Those were my instructions definitely.

Q. Was that your own method of decision?—A. Yes.

Q. Were you instructed by the executives of the store with respect to that point? Did Mr. Dulcan give you any instructions?—A. I believe Mr. Dulcan did, and I know Mr. Davidow did.

Q. To what effect?—A. To the effect of playing safe and don't take any chances; keep the prices within the regulation and fall to the safe side on all questionable points.

Q. Now, let me go back to another point, Mr. Levi. Will you refer to the General Maximum Price Regulation again and read to the Court the part that deals with the re-
317 quirements that prices be posted in the store?—A. This is Section 13 of the General Maximum Price Regulation, page 8. "Maximum Prices of Cost-of-Living Commodities: Statement, Marking or Posting. For the purposes of this section, a cost-of-living commodity is any commodity designated as such by the Price Administrator."

Q. Just the part that relates to posting. We have had that read before. I want to be sure the Court recalls the specific instructions.—A. "On and after May 18, 1942, every person offering to sell a cost-of-living commodity at retail shall mark the maximum price of such commodity in a manner plainly visible to, and understandable by, the purchasing public. The maximum price may be marked on the commodity itself or on the shelf, bin, rack, or other holder or container upon or in which the commodity is kept, or it may be posted at the place in the business establishment where the commodity is offered for sale. The maximum price shall be stated as follows: 'Ceiling Price $.....;' or 'Our Ceiling $.....'. Any person choosing to post by price-lines the maximum prices of commodities in the classifications marked by asterisks in Appendix B shall post the maximum price by price-line at the place in the business establishment where the commodities in such price-line are offered for sale, and, in addition,
318 shall mark the selling price of each such commodity on the commodity itself."

Q. Now, do you recall, Mr. Levi, any discussion about that

requirement prior to the effective date of the General Maximum Price Regulation—that is, prior to May 18?—A. Yes; I do.

Q. Do you recall going to a meeting at the OPA at which that was discussed?—A. Yes.

Q. Will you tell the Court, so far as you remember, what happened at that meeting?—A. Yes. I think the meeting was approximately May 1 or 2, which was this Retail Trade Association meeting held by the OPA, in the afternoon session of which Mr. Fainsod spoke in relation to the General Maximum Price Regulation. I was attending with——

Q. (Interposing.) Would you identify Mr. Fainsod for the Court so far as you can?—A. Dr. Fainsod—I am not sure of his title—but at that time he was in charge of the retail end of the General Maximum Price Regulation.

Mr. GORDON. For the OPA?

The WITNESS. For the OPA.

A. (Continuing.) That meeting I attended with Dr. Craig as representative for the American Retail Federation.

319 In the afternoon session there was some talk about the posting of prices around the store.

The question had been debated between various department stores as to whether a book made up of these price lists that we were making, posted in the department, conspicuously displayed with a sign above it saying, "Our Ceiling Prices Are Listed in This Book," would be satisfactory under the regulations, the reason being that under the regulations it says that in the business establishment at the place the commodity is offered for sale.

That question had been debated amongst the stores, but no definite answer had come out of our debates because there was no official opinion. I mentioned to Dr. Craig that I felt it was an item that would help greatly if we cleared it up, so I asked the question whether books posted in the departments would be allowed as proper posting with the signs. Dr. Fainsod answered yes. Immediately thereupon there was a discussion between Mr. Wells, Mr. Coombs and Dr. Fainsod.

Q. Will you identify those for the Court?—A. Mr. Coombs was the assistant to Dr. Fainsod at that time and Mr. Wells was the lawyer who was actively engaged in the work on the OPA regulations at that time.

320 Q. These were both OPA men?—A. These were both OPA men. Frankly, as I had received the answer to my question, the question was dropped, and, although there was some discussion, the answer that I had received was a yes

from Dr. Fainsod who was the senior member of the three and that is where it stood.

Q. What did you do on the basis of the information you received?—A. On the basis of that we pushed our OPA white sheet form No. 4 very hard in order that we could make all our typings at one time, in order to put a list in the department by books by May 18. It moved up our deadline actually from June 1 for that listing to May 18 in order to do it by book form.

Q. Did you make preparations in other respects than the pushing of the forms? or did you——A. (Interposing.) At the same time——

Q. (Continuing.) Take care of other details?—A. We, at the same time, ordered the books and stickers that were to be placed on them and had had a sample made up of a stand which would set on a table, inclined, with a sign above it saying "Our Ceiling Prices"; and, as I remember, when I left the Hecht Company, that stand and sign was still in the office which I had occupied.

Q. What transpired subsequent to this meeting with
321 the OPA people that required you to change your mind?—A. Well, the next we heard about the books—we went ahead with the books and so did various other stores—the next we heard was that there had been a discussion.

Q. Don't say "we."—A. The next I heard or read was that the New York Office of the OPA had reversed, or had not been willing to allow books to be used for the posting of their prices.

Mr. AUSTIN. Object. It is entirely irrelevant and absolutely immaterial.

Mr. HORSKY. I think it is not, Your Honor. I am trying to show the difficulties the store had.

The COURT. It may stand with an exception noted.

Mr. AUSTIN. Note an exception.

By Mr. HORSKY:

Q. What did you do after you found this?—A. The change was made by the New York Regional Office as far as their region was concerned. However, there was no official ruling out of the central office of the OPA and I don't believe I finally got an official ruling until approximately May 12. At that time I don't know how I got it, but I know that an official ruling was handed out that they would not allow books to be
used as posting for the various commodities under the
322 General Maximum Price Regulation.

Q. What did you do then with respect to preparing for this posting?—A. It meant a complete reversal of our procedure. We then had to immediately go and order approxi-

mately 100 rubber stamps and have signs ordered in order to be ready by May 18. We worked out a plan and worked our sign shop late hours at night. We got in an extra person or people to work in the sign shop to keep it going. We rubber-stamped all the items that we possibly could. Finally, on May 18, we arrived at what we felt was a representative and satisfactory display of ceiling prices throughout the store.

Q. You say that you believed on May 18 there was an adequate posting of ceiling prices?—A. Yes; I felt confident that there were some errors in those postings because we found them, and, as we found them, we corrected them.

Q. Did you have occasion to see whether your postings would compare favorably with those of other stores?

Mr. AUSTIN. Object.

The COURT. Sustained.

Mr. HORSKY. All right.

323 Q. Do you recall, Mr. Levi, whether you received any communication from the Office of Price Administration with respect to the postings which you had made? Let me recall to you the name of Mr. Hechtor Lazo. Shortly after May 18th, when the posting requirement became effective.—A. There were several called by Mr. Lazo to me previous to May 18th, and after May 18th another call, at which time he requested the opportunity of sending photographers to the store.

Q. Would you tell the Court who Mr. Lazo is, or was?—A. I am not sure of the title, but I believe it is head of the retail trades division. In other words, I believe he is the one who has to disseminate information about the general maximum price regulations.

Q. He is an OPA official?—A. Yes; he is an OPA official.

Q. Will you state again what Mr. Lazo requested of you?—A. He requested that he send photographers to the store to take pictures of our postings.

Q. Did he say why he wanted that?—A. He mentioned over the phone that he understood that our postings were nicely done.

Q. Did the photographers actually come, as far as you know?—A. The photographers came, and I personally took them around the store to have the pictures taken.

324 Q. Do you recall where they took the pictures?—A. They took some in the furniture department, they took one on the first floor directly looking at the toothpaste counter to show our ceiling prices on toothpaste.

Q. What department is that?—A. That is the toilette goods department on the first floor. Also one of soaps, I believe.

Those are the three that I definitely recollect, because I remember being in those locations.

Q. Do you know what happened to those pictures after they were taken? Did you ever see them again?—A. I personally have not seen them again.

Q. Who is Mr. B. Allan Mays?—A. He was a member of the Hecht Company while I was at the store—of the advertising department of the Hecht Company.

Q. Do you recall whether Mr. Mays—let me re-phrase the question. Do you know the source of the pictures in the maximum price regulation bulletin no. 2, "What Every Retailer Should know," on pages 24 and 25 with respect to the posting of ceiling prices?—A. It is my understanding that B. Allan Mays, of the Hecht Company——

Mr. AUSTIN. The question may be answered yes or no. I think it is objectionable. If the witness will limit his
325 answer to that, I will withdraw the objection.

By Mr. HORSKY:

Q. Will you first answer the question yes or no? Do you know where those pictures came from, where some of them or any of them?—A. I cannot qualify the statement, yes or no?

Q. Just say yes or no, do you know. Of your own knowledge, do you know the place that these pictures came from—any of them came from?—A. I know where some of these definitely came from; I am not sure——

Q. Not all of them. Let me ask you a further question. Will you state which ones you know about? Will you hold it up so the Court can see it? Or have you an extra copy of this?—A. This is definitely one that I know of.

Q. Identify them so that the reporter can understand.—A. This is definitely the one, illustration number 7, that I know came from——

Q. Don't say where it came from, we are just asking you which ones you know.—A. I know definitely number 7.

Q. Any others?—A. I wouldn't want to say.

Q. Where did illustration No. 7 come from?—A. Illus-
326 tration No. 7 appears to be the price tag on furniture.

Q. You said you knew how it came to be. Will you explain where it came from?—A. This is a sketch made by B. Allan Mays of the price check of furniture.

Q. In the Hecht Company?—A. In the Hecht Company.

Q. Were any of the other sketches on that page made by Mr. Mays, do you know?—A. It is my understanding; yes.

Q. Which ones?—A. I wouldn't want to say without seeing the original sheets.

Q. I see.

Mr. AUSTIN. Do you have a department number 562 in the Hecht Company?

The WITNESS. No.

Mr. AUSTIN. I object if the Court please, to all of this testimony with respect to illustration No. 7, because it purports to be of department 562. It does not have the Hecht store's name on it and it identifies itself as being something of which there is none in the Hecht Company.

Mr. HORSKY. The witness did not state that this was a photograph of the Hecht Company ticket. He said it
327 was prepared by Mr. Mays from the Hecht Company ticket, and obviously would use a fictitious name or no name, as it does in this case.

The COURT. The objection is good if what you say is true.

Mr. HORSKY. I beg your pardon. The witness stated, Your Honor, that this was prepared by Mr. Mays and was copied from a Hecht Company ticket. He did not say that the writing on it was the same as would appear on any Hecht Company ticket, actual ticket, but it was a form of the Hecht Company ticket to illustrate that that would be a proper method of posting ceiling prices.

The COURT. Objection sustained.

By Mr. HORSKY:

Q. Mr. Levi, when did you actually stop working on the OPA work in the Hecht Company, as you remember—approximately, as close as you can?—A. Approximately between the 15th and 20th of June.

Q. Why did you stop at that time?—A. I was taken ill at that time.

Q. Was it a serious illness?—A. It was diagnosed as a streptococcus throat.

Q. You were in bed?—A. Yes.

Q. Thereafter did you return to the Hecht Company?—A. No; I did not.

328 Q. And when did you received your Commission?—A. The Commission was dated July 1st, and notice was received by me by approximately July 6th or 7th.

Q. From that time on, you have been in the Coast Guard?—A. From that time on I took my oath and was in the Coast Guard. I may add the oath was taken approximately July 11th.

Q. Mr. Levi, during the time that you were—let me ask this question. You have referred several times to a price control office. Would you explain when that came into existence and

what it was?—A. That came into existence before the general maximum price regulation. In order to study these regulations and study the Federal register, you had to have some privacy. We took a corner of the Accounting office, built partitions around it, so that a person could have some privacy, and I did my studying in there, just to get me away from the rest of the office.

Q. What was your title at that time in the store?—A. Well, when I started off I had no title, but as the thing started to grow, it was Price Control Administrator.

Q. That is the office that you referred to as the price control office?—A. Yes.

Q. During the time that you were the Price Control Administrator in the Hecht Company, did you ever receive
329 any complaints from anyone in the Office of Price Administration with respect to any of the things you were doing, or not doing in the store?—A. No; I received no complaints.

Q. That is all, Your Honor.

The COURT. I think we will take a five-minute recess.

(At this point a short recess was held.)

Mr. HORSKY. Your Honor, I have one further question I would like to ask the witness.

By Mr. HORSKY.

Q. Mr. Levi, on Thursday Mr. Kaplan testified with respect to department 47, Miss Rothenberg's department, as follows, page 83: "Another case—speaking about sales above the proper price—she stated that the items had been sold in March, I think it was Van Raalte, at $1.35. Subsequently, the price to her had been raised and in April she was selling these hose at $1.65. Then when the order came out about the general maximum price regulations, she had questioned Mr. Levi who was in charge at that time as to how she should price that item, and Mr. Levi informed her that she should price it at $1.50, sort of as a compromise. Therefore, she kept it at $1.50." Do you recall ever telling Miss Rothenberg that she should compromise that item?—A. I see no reason why I would ever say to compromise an item.

330 Mr. AUSTIN. Object to the answer.

Mr. GORDON. Did you say that——

The WITNESS. No.

The COURT. One at a time.

Mr. AUSTIN. I object to the answer, if the Court please, because it is not responsive to the question.

The COURT. The last answer was no, that he had not said that to her.

Mr. HORSKY. That is all, Your Honor.

Mr. GORDON. I beg your pardon, your Honor.

The COURT. You may cross-examine.

Mr. AUSTIN. If the Court please, at this time we want to, in order to keep the record straight, note again our objection to the testimony of and questions promulgated to Mr. Levi since our original motion and covering all his testimony and all questions propounded to him since that motion, and further that our cross-examination of Mr. Levi from this point on is made for the purposes of the record due to the fact that the Court will reserve decision on our motion with respect to his direct examination.

The COURT. Your motion will be overruled upon the grounds taken when we consider the question before us, and you are at liberty to cross-examine without any waiver of your objection.

Cross-examination, By Mr. AUSTIN:

Q. Now I believe you stated, did you not, Mr. Levi,
331 that you checked personally the General Maximum Price Regulation when it came out?—A. That is correct.

Q. And that the buyers of the Hecht Company ordinarily had very few records to keep?—A. That is correct.

Q. That their primary function was to go into the market and buy commodities which they thought the consumer would want to purchase?—A. Correct.

Mr. HORSKY. Would you speak a little more loudly so I can hear you answer?

The WITNESS. Correct.

By Mr. AUSTIN:

Q. It is a fact, is it not, that the primary responsibility for compliance on the part of the various departments in the Hecht store with the general maximum price regulations was placed on these buyers?—A. That is correct.

Q. Do you know, Mr. Levi, whether or not these buyers are paid on an incentive compensation basis?—A. Yes; I do.

Q. And, as a matter of fact, they are so paid, are they
332 not?—A. That is correct.

Q. And it is to their benefit, is it not—to their personal benefit—for their department to make money?

Mr. GORDON. We object to that. It seems to me it is no more relevant to show that it is to the buyers' benefit to make money than it is, you might just as well say, for the OPA counsel to win this case.

The COURT. You may answer.

The WITNESS. It is to their benefit to make money honestly.

By Mr. AUSTIN:

Q. Now, then, this compensation which they make is in the nature of a straight salary plus a commission or bonus on the amount or the excess of their department's net profit with respect to the preceding year, is it not?—A. I believe that that is correct.

Q. To the best of your knowledge?—A. That is my belief.

Q. Now, then, you instructed the buyers, did you not, with respect to the store's OPA form, that that was to be 100 percent accurate?—A. That is correct.

Q. And you sent the forms to the merchandise men, did you not?

Mr. HORSKY. Which forms are you referring to?

333 Mr. AUSTIN. The store's OPA form.

The WITNESS. The white forms?

Mr. AUSTIN. Yes.

The WITNESS. Yes; they were sent to the merchandise manager.

By Mr. AUSTIN:

Q. And they were instructed to dispense them to the various buyers under them, were they not?—A. That is correct.

Q. And the responsibility for filling those out was in the buyers, was it not?—A. Yes.

Q. And the buyers filled those out, did they not?—A. Yes.

Q. And through the merchandise men those were returned to your office?—A. That is correct.

Q. Then I believe you testified that the only thing your office did with those, or your associates, was to copy them onto the form, the original of which you filed with the OPA.—A. Not the only—I also stated that we attempted to spot-check but that the spot-check was inadequate and small due to the price——

Q. Just a minute.

334 Mr. GORDON. Can't he finish?

The WITNESS. I said the spot-check was small and inadequate, but that the press of other regulations was the cause for that spot-check not being carried out.

By Mr. AUSTIN:

Q. I don't believe you understood my question. Clear that up. This spot-check did not take place until after those forms had been returned to the buyers, did it?—A. You mean the typed forms that were returned to the buyers?

Q. That is right. You did return them to the buyers, did you not?—A. That is correct, for them to check.

Q. They were supposed to check?—A. Typographical errors etc. I believe the spot-check was made after that point.

Q. Yes?—A. But remember, all of that was previous to the enforceable date of the regulation.

Q. You say all of this was previous to the enforceable date, all previous to May 18th?—A. I will say that—I had better correct that. I can't be sure of that under oath, to say that that is true.

335 Q. What would you say about it, then, was it or wasn't it, or don't you know?—A. I would say that the major portion of all of this work was done previous to the effective date of the regulations.

Q. Does that include the spot-check?—A. That includes the spot-check as a major portion of the work, but I cannot swear under oath that it was done before the date of the regulations.

Q. I believe you stated that the mark-ups were—that is, the clerical work—done through a mark-up form that you have carried in a mark-up book for each department.—A. The mark-ups; yes.

Q. Did the store up to the time you left operate with a sold-goods mark-up?—A. I don't quite understand the question.

Q. Strike the question, please. Did the store not have, in addition to the mark-up form you spoke about a sold-goods mark-up form?—A. I still don't understand.

Q. Do you know what a sold-goods mark-up is?—A. As you are expressing it, I don't know.

Q. Then I believe that you further testified that Mr. Weitzburg or Mr. Brown had to okay all mark-ups.—A. That is correct. There was a date in there that that order came out. There was a certain date that that order came out.

336 Q. Yes; I think that appears on the exhibit—May 1st, I believe. From that date on they had to okay all the mark-ups.—A. That is correct.

Q. Now, then, I believe you further stated that in the departments, with the exception of the furniture department, the sales check would not identify any article.—A. I stated something similar to that, yes.

Q. And the style number, the store's style number on a commodity, definitely establishes that commodity, does it not, as to identity?—A. No. At least as I understand your question, my answer is no.

Q. Each commodity has a style number, doesn't it? Each item has a style number?—A. In a store?

Q. Yes.—A. Not that I know of, not as far as the store is concerned.

Q. It does not?—A. Not each item in the store, no.

Q. A large majority of the items have style numbers, do they not?—A. I wouldn't even say that, no.

Q. Will you tell us just what a style number is? You know what that term means, do you not?—A. The style number, as I understand what you are driving at, is the style
337 number placed on it by the manufacturer, and it is not——

Q. It is not a store number?—A. It is not a store number.

Q. All right, then, is it not a fact that most of the articles sold in the store have a manufacturer's style number?—A. That is true.

Q. That a buyer, by a style number, can very definitely describe any particular item?—A. That is not true.

Q. You mean to say that if he is given the style number of an article he knows generally—given the manufacturer, he knows basically what the field of the commodity is—that he would be able to identify it that way?—A. I don't believe that applies here. The commodity is handed to a buyer and the buyer is told to identify the commodity with the manufacturer and by style number, etc. If you give a buyer certain commodities in their department and they have been there for quite a length of time, I don't believe in some cases the buyer can identify that particular commodity that you have handed to him with any particular manufacturer's style number.

Q. I didn't ask you that question. But if you give him the style number of that, he knows just what that is, doesn't he?—A. No.

Q. Then what does the style number mean, Mr.
338 Levi?—A. Style number means something to the manufacturer, and if we get the style number and the name of the manufacturer, we would be able to tie it up to the item if you remember what the item was.

Q. All right: shoes, for instance, from the same manufacturer; different types have different style numbers, don't they—to identify the difference in the shoes or identify it as a different shoe from another shoe by the same manufacturer?—A. That is correct.

Q. And without seeing the commodity itself, but seeing it described by the name of the manufacturer and the style number and the price, the buyer ordinarily dealing in those commodities would know just what that item is, would he not?—A. Probably; yes.

Q. And you testified he is about the only person that is familiar with the commodities which are sold in his department, is he not?—A. He and his assistant.

Q. Now, then, referring to page 29 of bulletin No. 2 with respect to the General Maximum Price Regulation, Mr. Levi——A. No; this is the wrong one.

Mr. HORSKY. That is bulletin No. 2.

The WITNESS. You said "bulletin No. 2."

By Mr. AUSTIN:

339 Q. Oh, pardon me; yes; bulletin number 2, page 29. In the second column it provides there, does it not, for the style number of the commodity?—A. Yes.

Q. When you made up your OPA form No. 4, which you testified was before—cross that. When you made up your store's OPA form No. 4, had you seen this bulletin No. 2?—A. No.

Q. Now, then, Mr. Levi, there was no question in your mind at the time you made up your OPA No. 4 but that the style number should be listed in filling out these white sheets, was there?—A. The best and easiest way to identify an article in a retail store is according to a manufacturer's name, style number, etc., where it can be got.

Q. That is right. But now I notice you have that included in your form No. 4, and I repeat the question—there wasn't any doubt in your mind that that ought to be here, and that that is a part of the description which ought to be filled in, was there?—A. At the time in making it up I felt that that was the type of description which would be adequate. However, I felt that if the manufacturer's name and style number were not possible to be gotten, that a complete and thorough description would be absolutely necessary and that if we
340 had both, we would have done even a better job.

Q. Now, then, later on you did see the bulletin No. 2, did you not?—A. That is correct.

Q. And, as a matter of fact, that confirmed your opinion with respect to what was necessary on your OPA form No. 4, did it not?—A. Practically; yes.

Q. And, as a matter of fact, these buyers were supposed to fill in the style numbers of these various commodities, were they not, in filling out your form No. 4?—A. If they knew them.

Q. Even if they did not know them, it would not be very difficult to get them, would it?—A. Yes; it would be quite difficult.

Q. Wouldn't they appear on the confirmations?—A. But

there would be no way to match the confirmation against the actual item on the floor.

Q. I thought you just said that the buyer was the man who could identify his own merchandise?—A. If there would be anyone, he would be the man.

Q. You mean to say that he could not identify it?—A. In certain locations and certain departments where the merchandise has been on the floor for many, many months, there is no manufacturer's label, I would be willing to say that
341 there are times when a buyer cannot identify merchandise on the floor with a confirmation. I won't say that it is a general rule. It is not a general rule.

Q. But it is possible for him to make that error, and not be able to identify?—A. It is possible.

Q. And then it would be possible, would it not, for Mr. Rose and Mr. Jordan, the buyer and assistant buyer of department 26, to make a mistake in identifying for Mr. Kaplan various commodities that were on the base period statement without an identifying style number, would it not?—A. I am sorry, I am not versed with that end of this case at all.

Q. I don't think you need to be versed with any particular end of the case.

Mr. GORDON. The witness does not know what Mr. Kaplan testified.

The WITNESS. I have not heard any of the previous case; I don't know anything about the investigation, and I do not feel under oath I would be able to answer anything like that.

Mr. AUSTIN. All right; withdraw the question, please.

By Mr. AUSTIN:

Q. Mr. Kaplan testified, Mr. Levi, that he went through department 26 with Mr. Rose and Mr. Gordan and asked
342 them to identify certain commodities which appeared on the floor for sale with certain others that were on the base period statement, the base period statement not containing style numbers, and they were unable to do so. You can understand why they couldn't do that, can't you?—A. No. I don't understand the whole procedure on it. I am sorry, but there are too many things that have happened between the time that the base period lists were made up and the time that Mr. Kaplan was on the floor. I think that question could be asked of someone else who could give a more intelligent answer to it.

Q. All right; referring now to defendant's exhibit A-1, which purports to be a memorandum, bulletin to all buyers and mer-

chandise managers from Mr. Weitzburg; Mr. Levi, did you prepare that?—A. I believe I stated previously that I helped in the preparation. I was aware that we were preparing it, and I am not positive whether I prepared it with Mr. Weitzburg or prepared it for him.

Q. Would your opinion be that it was your combined efforts?—A. I believe that it was.

Q. Now, then, referring to the store's OPA bulletin No. 4, which I believe you testified—the Company form No. 4, which is bulletin to managers, buyers, and assistant buyers,
343 and is from O. C. Weitzburg, do you recall whether you had anything to do with that?—A. May I see the bulletin, please? Yes.

Q. Did you actually write this bulletin, or did Mr. Weitzburg—— A. The answer is about the same as the other. I believe that I constructed a great portion of it, some of it in collaboration with Mr. Weitzburg.

Q. At least you gave him the facts on which the bulletin is based?—A. Yes.

Q. And it includes your interpretations of the requirements of the "General Max" on this particular matter?—A. My interpretations, yes.

Q. Yes. Now then, with reference to Maximum Price Regulation 142, Mr. Levi—strike that last; Department 26 was affected by that Regulation, was it not?—A. I would like to have the name of that department.

Q. 26, students' clothes.—A. May I see the regulation, please?

Mr. HORSKY. Which one do you want?

The WITNESS. Summer seasonal, 1942. I would believe that they were affected by this regulation.

By Mr. AUSTIN:

344 Q. Now, then, do you know, Mr. Levi, whether or not it is possible to price commodities under that Regulation in accordance with "General Max"?—A. I would like to have a copy of the Regulation. I have a list of summer seasonal commodities; the Regulation must be the next exhibit.

Q. I will strike that question and ask you the following, Mr. Levi.—A. Yes.

Q. Referring to Exhibit I of the defendant; it purports to be a bulletin to the merchandise managers and buyers; am I correct in assuming that that bulletin came from your office?—A. That is correct.

Q. And the second paragraph is your idea of the provisions of Maximum Price Regulation 142?—A. It is a very condensed

version of something that they had in printed form in the complete General Maximum Price Regulations.

Q. Yes; do you know whether Mr. Rose followed 142 or followed "General Max" or both in determining his prices?—A. It is too far back; I wouldn't know.

345 Q. Mr. Levi, in this spot check of the departments that you speak of, do you know in what departments that spot-check was made?—A. No; I don't remember exactly.

Q. Now then, you ceased your employment with the Hecht Company on or about July 1?—A. No; I should think about June 15 or 20, approximately.

Q. That is when you became ill and you didn't return there after that?—A. That is correct.

Q. And you have been in Baltimore since that time?—A. No; I spent several weeks in Maine directly after my illness and then returned to active duty in Baltimore.

Q. But you have had no connection with the price control office of the Hecht Company since on or about 20th of June?—A. Except previous to this case coming up.

Q. That was not as an employee?—A. No.

Q. But as a witness in this case?—A. That is correct.

346 Q. Prior to October 1, 1942, how long had it been since you had been in the Hecht Company, Washington store?—A. Prior to October 1?

Q. Yes.—A. Well, since I was in Baltimore I was in the Hecht store one Thursday night, and I believe it was somewhere around in August or September. I am not sure of those dates at all.

Q. You don't know when it was?—A. No; I don't.

Q. You have no personal knowledge of what has been done in the Hecht Company since you left with respect to compliance with the General Maximum Price Regulations?—A. No.

Q. That is all, I believe.

Redirect examination by Mr. HORSKY:

Q. Just one more question to clear up this matter of style numbers. Is it possible that would be items which are exactly the same which would have different style numbers?—A. Well, it depends upon what you consider exactly the same. If they are made the same, same style, but a different color, and

347 that you call not exactly the same. Then identical items, or exactly the same items, could have different style numbers.

Q. Is it not possible, too, that a manufacturer might sell an item which was, in all respects, identical and give it two dif-

ferent style numbers?—A. It could be possible if in the change of a year an item was sold in '39 for item such-and-such and then again in '40 as a new item, putting it in a new line. In that way he could have an identical item with two separate lot numbers.

Q. Is it not possible also, Mr. Levi, that items which have the same style numbers can be different?—A. Well, again, it is a fine point on the color where a trimming or that type of thing. In other words, it could be exactly the same garment with a different pin here [indicating], in reference to a lady's dress, and that may change the style number, but that is due to peculiarities of the different manufacturer and how he wishes to arrange it.

Q. But there might be items which would be different and still have the same style number, maybe have a different pin or different button, or something of that sort?—A. Yes, sir; that is possible; and also possible that identical item in different color carry entirely different style number.

Q. That is all.

348 Your Honor, this witness would like to be excused because he is on active duty in Baltimore.

The COURT. Any of you have any objection?

Mr. AUSTIN. I think not.

(Witness excused.)

L. G. ETELSON, a witness called by and on behalf of the defendant, having been previously sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. You are the same Mr. Etelson who has already testified in this case as witness for the plaintiff?—A. Yes, sir.

Q. What is your present position with the Hecht Company?—A. I am in charge of the price control division.

Q. When you say "the price control division," you refer to the same thing Mr. Levi calls the price control office?—A. Yes, sir.

Q. Is your title price control administrator?—A. Director of the price control office.

349 Q. Before you came to work for the Hecht Company, where had you worked, Mr. Etelson?—A. Prior to my connection with the Hecht Company I was with the J. A. Wundt organization in New York.

Q. What kind of organization?—A. Direct mails service; advertising.

Q. When you first came to the Hecht Company what was

your position?—A. I was in charge of the addressograph department, which was, at that time, connected with the advertising department.

Q. Will you explain that department?—A. That was the department that took care of the mailing lists for the store, the charge account lists, etc.

Q. For advertising and credit and things of that sort?—A. Yes, sir.

Q. When was it that you came to the Hecht Company?—A. To the best of my recollection, I think, it was back in 1929.

Q. What was your position following that position you have just described?—A. I was assistant direct mails advertising manager.

350 Q. And then what?—A. And then direct mails advertising manager.

Q. You recall about when you had that position?—A. I would say along in '31 or '32, probably.

Q. After that what position did you hold?—A. As I recall, I had charge of the comparison shopping division and also the internal promotional division. I don't know which one came first, but I had both of them.

Q. Will you explain to the Court briefly what internal store promotional division was?—A. The internal promotional division was the division charged with taking care of a promoting of a sale of merchandise without relation to newspaper advertising; that is, training employees to sell additional merchandise, or suggest additional merchandise to the customers, sales promoting by posters throughout the store, or by leaflets in packages, or by order taking by employees, and so forth.

Q. Was it confined to any particular department?—A. No; store-wide.

Q. And your contact in that particular division would be a contact with all departments of the store?—A. Yes, sir.

Q. You say you were also at this time, or about this time, in charge of the comparison shopping division.

351 Would you explain to the Court what that is and does?—A. That is a division of a staff of professional shoppers, mainly women, whose job it is to take the viewpoint of a customer in checking our own store and checking our advertising and in checking competitive stores. Every advertisement before it is released to the newspapers must be approved by a shopper who checks it to make sure it complies with the Federal Trade Commission and Better Business Bureau Regulation.

Q. Will you explain what those regulations might be that she would look for?—A. The Federal Trade Commission relates to such as regards to stating wool content or rayon in

advertisement; and Better Business Bureau Regulations, such as stating the value of a piece of merchandise or making certain that we have the merchandise exactly as it is described in the advertisement; the color is right or quantity is sufficient to justify advertising; and a customer response.

Q. Was that confined to any single department, or was that, likewise, store-wide?—A. Store-wide.

Q. Would you say that each of these positions gave you contact with the entire store?—A. Yes, sir; very definitely.

352 Q. About how many persons did you have under you, as director of internal store promotion?—A. Well, as a staff, it would probably go up to five; but also I had under me the various store managers in the store, and the service heads; and the salespeople, too, when we were working on some particular event.

Q. In the comparison shopping division you say you had?—A. It would range from five to as high as ten people at one time.

Q. Who would be shoppers?—A. Yes; sir.

Q. Do you recall the visit to the store by Mr. Coomb and Mr. Brill?—A. Yes, sir.

Q. How did you first learn they were in the store?—A. I was called in to Mr. Dulcan's office.

Q. Were they there then?—A. Mr. Dulcan, Mr. Daridow, Mr. Coombs, and Mr. Brill were there.

Q. What did Mr. Dalgan tell you with respect to these gentlemen?—A. Dr. Dalgan told me that these gentlemen were from OPA and they wanted some information and

353 some help on an analysis for methods of posting ceiling prices and wanted to get our viewpoints, and would also want to go around the store and talk to the buyers, and see how we housed the merchandise, and how we display it, and how we put up our signs, and so forth.

Q. Did he give you any instructions with respect to helping them?—A. He asked me to see to it that they got through the store and saw what they wanted to see and talk to the people.

Q. What did you do to carry out those instructions?—A. I went with them from Mr. Dulcan's office to my own, and I spent a few minutes—probably a half hour; I don't recall exactly how much time—discussing, generally, the problem with them, and I had to excuse myself because I was on jury duty at the time, and I turned them over to Miss Herrow, who was my assistant, and gave her the instructions to see to it that they go through the store and get all the information and facts they wanted.

Q. Did you see them again after that?—A. Yes; I saw Mr. Coombs and Mr. Brill that evening when I returned back to the store, and I saw Mr. Brill again the next day.

354 Q. Did they make any comment to you about what they found out?—A. They said we had been very helpful and they had learned a great deal and they appreciated the cooperation.

Q. Could you remember about what day; could you place it approximately?—A. I think it was sometime about the middle of April.

Q. It was before the General Maximum Price Regulation?—A. Oh, yes.

Q. Do you recall the merchandise clinic meeting at which Mr. Saul Nelson spoke?—A. Yes; I do.

Q. Do you know of your own knowledge how Mr. Saul Nelson happen to be chosen to be the speaker?—A. Yes.

Q. Will you explain that to the Court?—A. Mr. Brill and Mr. Coombs were in the store, and I told Mr. Brill that I thought that the General Maximum Price Regulation would be quite important and that I would be responsible for the program at the next merchandise clinic, that I thought it would be very good if we could get a speaker who could tell us

355 something about what was coming and, perhaps, give us the background and wanted to know if he would suggest someone from OPA that would give us that information. He suggested Mr. Saul Nelson from the Bureau of Labor Statistics, who was familiar with it, and who would and could do it. He said he would talk to Mr. Nelson, and I said I would call him. I called Mr. Nelson and arranged for him to attend that merchandise clinic meeting.

Q. From that time on—that is, from about the middle of April, when you had this conversation with Mr. Coombs and Mr. Brill—did you have anything further to do with the regulations of the OPA until after the General Maximum Price Regulation had been issued, or were you back on your previous duties?—A. I was back in previous duties.

Q. You were not Mr. Levi's assistant at that time?—A. No, sir.

Q. When did you again begin to work on these regulations—A. I believe some time in May, about the middle of May. Mr. Dulcan called me into his office and told me he expected Mr. Levi to leave within a few weeks and that he would like for me to take over his work, and until he left to sort of understudy him and become familiar with what he was doing, and the regulations, and so forth.

356 Q. This before the General Maximum Price Regulation came out?—A. No.

Q. I mean before it became effective?—A. I don't know whether it was just before or after; I am not certain of the date.

Q. Mr. Levi stated that he left the store about the 20th of June. Is that your recollection?—A. Yes, sir.

Q. From the middle of May until about the 20th of June you did what you just described?—A. I spent part of my time with him and in his office following the general routine, becoming familiar with the various duties that he had.

Q. When you say "part of the time," will you try to be more specific as to how much of your time?—A. I would say close to 50% of my time.

Q. You were also, during this period, the head of the other two departments you mentioned?—A. Yes, sir; and at the same time I was training someone to take over the work of the comparison shopping division.

Q. Does that have a new head now?—A. Yes, sir.

357 Q. Do you remember what your first task was with respect to the regulations of the Office of Price Administration. What was your first task when you became the price control administrator, do you recall?—A. Well, I remember that so far as regulations are concerned, I think the first regulation I worked on was the 153, women's, girls', and children's outerwear. In addition, of course, we had to see to it that all these lists were filed with the War Price and Rationing Board on the base list.

Q. Those lists were not filed when you came in and became price control administrator?—A. No, sir.

Q. That is, you succeeded Mr. Levi during the course of the preparation of these lists?—A. That is right.

Q. Did you work on this original regulation #153 that Mr. Levi mentioned?—A. To the best of my recollection, I worked with him, or alongside of him. He really worked on the original.

Q. You worked, however, on the revised, the one completely revised on June 9, if I remember the date correctly?—A. Along about that.

Q. I show you, Mr. Etelson, a memorandum dated June 15, addressed to all buyers coming under price regula-
358 tion #153, and ask you if you prepared that regulation?—A. No; Mr. Levi prepared it, but I was alongside of him.

Q. You helped prepare it?—A. Yes.

Q What does it purport to be?—A. It is a brief of the regu-

lation, and an explanation to the buyers and merchandise managers of how the regulation operates.

Q. This was before it was completely revised?—A. I think so.

Q. You will notice it is dated June 15?—A. I know there were changes made after that, because I had to issue an up-to-date bulletin on this.

Q. If the date in the circular is correct, the revision occurred on the 9th, and this would refer to the first revision, would it not?—A. Probably would; yes, this is the one issued after it was revised.

Q. Would you read, Mr. Etelson, the explanation in this memorandum concerning the method of pricing which was to be adopted under this regulation as it was revised?

Mr. JAMES: I object to that. If you will offer it in evidence, I will object in evidence and make a point about it.

359 Mr. HORSKY. I will offer it in evidence.

Mr. JAMES. I object to it being offered in evidence. May it please Your Honor, I don't want to renew the argument; first, on the same ground as the one this morning. I take it that the general objection runs through the whole line of testimony?

The COURT. Yes.

Mr. JAMES. The second ground is that so far as appears and I believe so far as the fact, this Regulation does not concern any of the departments that were involved in the violations which the plaintiff charges here, and for that additional reason is irrelevant.

Mr. HORSKY. Your Honor, this is offered for the purpose of showing the work which the price control office was doing during the period when these lists were being prepared under the General Maximum Price Regulation, and it is also offered to show in explanation and to give the complete picture of the work of the price control office during the period which is covered by this investigation. I will ask the witness: does this apply to any of the departments which we are concerned?

The WITNESS. No; I don't think it does.

Mr. HORSKY: But it is offered for the particular purpose I mentioned.

360 The COURT. It may be received, subject to your objections.

(The document was marked "Defendant's Exhibit Q" and received in evidence.)

By Mr. HORSKY:

Q. Explain to the Court by reading that particular provi-

sion?—A. (Reading.) "The retailers are not allowed to sell above the highest price line they sold last year. Therefore, the following rules will govern you in the purchasing and pricing of all garments that fall under this regulation.

"1. Buyers must use only the retail price lines that they had established during the last selling season. No higher price lines may be established, nor intermediate price lines be established that were not used last season.

"2. Buyers must take the same mark-up as last season on costs.

"3. Buyers must purchase at the same costs as last season in order to keep the same retail price lines, as manufacturers lines are also frozen, there should be no difficulty in finding your costs of this season the same as last.

"4. Where you make a purchase below the customory established cost price line, your maximum retail shall be your cost plus the average initial dollar mark-up on the estab-
361 lished retail price line for this merchandise during your last selling season." There is an example to cover that.

"5. Where a buyer merchandised a cost price into several retail price lines, the ceiling price is established by that retail price line in which the greatest quantity was sold." And there is an example covering that.

Q. I hand you, Mr. Etelson, a copy of a bulletin, in two pages, which is a list called "OPA Number 9" and is addressed to all buyers and merchandise managers, women's outergarments, and ask you what that bulletin purports to be?—A. This is a follow-up on the other bulletin with reference to Price Regulation No. 153.

Q. What does it, in general, contain?—A. It contains the general listing of the items which come under the Regulation and the instructions for filling out the form for establishing ceiling prices.

Q. I offer that in evidence as Exhibit R.

(The document was marked "Defendant's Exhibit R" for identification.)

The COURT. That will be all for this evening. Be back at 10:00 o'clock.

* * * * *

363 The COURT. Now you may proceed.

(Mr. Etelson resumes the stand.)

Direct testimony by Mr. HORSKY:

Q. Thank you, Your Honor. Mr. Etelson, at the close of the proceedings yesterday I believe you stated that the first regulation that you personally worked on was Regulation No. 153

dealing with women's and children's outer garments, is that correct?—A. Yes, sir.

Q. And you had identified a bulletin which you prepared for the store dealing with that regulation?—A. That is right.

Q. I hand you a form marked OPA No. 9 and ask you if that is the form which accompanied that bulletin.—A. Yes, sir.

Q. That was the form that was required to be filled
364 out by the buyers?—A. Yes, sir.

Mr. HORSKY. I offer this, Your Honor, as defendant's exhibit S.

(The document was marked "Defendant's Exhibit S" for identification and was received in evidence.)

By Mr. HORSKY:

Q. I hand you another bulletin which is entitled "An Up To Date Bulletin on OPA, No. 153", dated August 14, and ask you if you prepared that bulletin.—A. Yes, sir.

Q. What was the purpose of that one?—A. The purpose of this bulletin was to bring information that had been previously issued up to date in line with the amendments and the interpretations to the regulation, and to try to make it as clear as possible for the buyers as to how this regulation operated.

Q. This was, in other words, designed to clarify subsequent amendments of the same regulation?—A. That is right.

Mr. HORSKY. Your Honor, I offer in evidence as defendant's exhibit T, this bulletin.

(The document was marked "Defendant's Exhibit T" for identification and was received in evidence.)

365 Mr. AUSTIN. May I see that?

By Mr. HORSKY:

Q. Excuse me. In that connection, Mr. Etelson, do you know aproximately how many times the GMPR has been amended since it was first issued?—A. The General Maximum Price Regulation——

Mr. AUSTIN (interposing). I will object to that if the Court please. The regulation speaks for itself.

By Mr. HORSKY:

Q. I will withdraw the question, Your Honor. Will you find out from this regulation, Mr. Etelson, or this Service which contains the regulation, how many times that has been amended?—A. Well, it has been amended several times—a number of times, as a matter of fact. Here is an amendment of August 20, and here is another amendment on December 4.

Q. What was the number on December 4?—A. The one on December 4 was amendment No. 38.

Q. Is that equally true with other price regulations which were issued—like 142 and 153 also?—A. Oh, yes. There have been many amendments to the regulations.

Mr. AUSTIN. If the Court please.

366 By Mr. HORSKY:

Q. To go back to amendment 153, to refresh the Court's recollection, will you state to what that applied?—A. Amendment No. 153 applied to women's, girls', and children's outer wear garments.

The COURT. The witness says Amendment 153.

The WITNESS. I am sorry—regulation 153.

Mr. HORSKY. Thank you, your Honor.

By Mr. HORSKY:

Q. That regulation priced those garments—those commodities on a different basis than the GMPR.—A. Well, it was a combination of both the GMPR and also different bases. If I can clear that up a little bit—this particular amendment applied to what they term "new lines of women's, girls', and children's outer wear garments," and the new line of those garments were items that were not carried in March of the same merchandise. In other words, if you carried this merchandise in March, then you did not price it under this regulation, but if you did not carry it in March, then it was priced under this regulation. This applied, supposedly, to Fall merchandise.

Mr. AUSTIN. If the Court please, at this time I would like to object to both the question propounded to the witness and the answer for the reason that they are entirely irrelevant and immaterial with respect to this particular question and

367 answer, referring as they do to Regulation 153. I believe the witness testified on the stand yesterday that this Regulation had nothing to do with, and none of the departments which were investigated and with respect to which testimony was offered in this case on behalf of the plaintiff were affected in any way, by 153.

Our main objection to this line of questioning, however, is that, in addition to that which we argued yesterday with respect to questions and answers propounded by Mr. Levi, whereas the defendant in this case and Mr. Gordon, in his opening statement, particularly, stated that it was not the province of the defendant to question the validity of any of these Regulations or this Regulation, the GMPR, they are in fact doing so by virtue of the fact that they are injecting into this case, by this type of examination, all of the other Regulations, and reflecting on the inability alleged of the defendant

to comply with the provisions of the General Maximum Price Regulation because of not only the amendments to the General Maximum Price Regulation, but all of the other Regulations that had been passed.

Now the defendant can profess, as it has professed up to this point that they are attempting or they are not attempting to attack the validity of the Regulation, but this line of examination goes to no other point and can go to no other point.

We here are only interested in the General Maximum Price Regulation. We have not alleged violations
368 under any other Regulations and we earnestly believe that the interrogation of these witnesses should be limited to matters relative to the General Maximum Price Regulation, and so far as that is concerned, to those features of the General Maximum Price Regulation on the basis of which we have made our allegations.

We think that the questions propounded to the witness and the answers, as I say, are irrelevant and immaterial and should be stricken from the record.

Mr. HORSKY. Your Honor, I understood that the objection which counsel raises with respect to the relevance of this line of questioning has been ruled upon by Your Honor, because the same question was held proper yesterday.

The reason I advanced it was that one of the things which is vital to the defense of the defendant in this case is the good faith, the work that it did in attempting to comply with these Regulations; the fact that it did everything humanly possible to do to make compliance as good as possible.

Compliance in the Hecht Company is not only compliance of the buyers. It is also the work of the price control office. This questioning is not designed to show that the General Maximum Price Regulation is invalid, is too complicated to be understood, or does not have to be obeyed. These questions are intended for no such purpose. If there could be any such inference, I expressly now disavow it.

The line of this questioning is to show the good faith
369 in line with compliance, and all of these regulations I am asking the witness about are regulations which were the responsibility of Mr. Etelson and upon which he had to devote time and upon which he had to devote the time of the personnel of his office in an attempt to comply.

To a certain extent they modified the rules laid down in the original General Maximum Price Regulation, and to a very large extent they explained the conclusion which I think Your Honor will come to, that Mr. Etelson has done everything that he humanly could to comply with it in every way, with the

General Maximum Price Regulation, which is the issue here.

I submit that the questions and answers are relevant to our defense and should be allowed to go into the record.

The COURT. Well, I assume that this case can be defined in such a way, and I realize that there is this vital question as to whether or not the failure to comply is all that is necessary in order to invoke the injunctive powers of this Court.

It must be shown that it was not a reasonable compliance; that that compliance was not in good faith, and in support of that, they wish to show the effort that they made to comply with the orders of the Price Administrator in its entirety.

I do want, however—I will say this: it has been my
370 purpose to allow a full record to support these contentions. I would like to have that and ask you, Mr. Horsky, to what length this will go.

Mr. HORSKY. I will make it as short as I can. The purpose, Your Honor, as I stated—I think I can make it clear in a short time. This line of questioning probably won't take 15 or 20 minutes—perhaps not that long.

The COURT. Very well, the objection is recorded. The evidence will be received and accepted.

Mr. AUSTIN. Will you note our general objection to all of the following questions propounded by Mr. Horsky and answers by Mr. Etelson, as well as any exhibits to be introduced.

By Mr. HORSKY:

Q. Mr. Etelson, will you explain to the Court how the defendant's exhibit S was handled physically in the store, with respect to this regulation?—A. I drew up a form and we ran it off on our equipment, and these forms, together with the instructions, were issued through the merchandise manager to the buyers, and when the information was filled in, it was returned to the Price Control Office for our information, to keep available information on—keep the information available for the OPA.

Q. Did you have an opportunity to check the result of
371 this particular work by the buyers?—A. Yes, I spot checked it.

Q. What was the result of your check in this instance?—A. Well, in several cases we found that some errors had been made by the buyers, and we went over it and went back again and rechecked and revised our information.

Q. Did you work on any of these yourself, in an attempt to make them correct?—A. Yes, sir.

Q. Personally, I mean.—A. Yes, personally.

Q. Now, this work was to be done prior to the time when

the OPA No. 4, white and yellow forms had to be typed up; is that correct?—A. Well, I think the OPA yellow forms were in process at that time.

Q. It was before July 1?—A. It was before July 1.

Q. So the OPA yellow forms would be either in your office or the hands of the buyers?—A. Or in the hands of the typist preparing the information.

Q. Have you with you in court, Mr. Etelson, one of the books which you prepared for these OPA forms in the form in which you submitted them to the OPA?—A. Yes, sir.

372 Q. Will you get it? I don't want to introduce this in evidence. I just want the Court to see the form. Will you explain what those various papers in the form are?—A. The front page here has a code sheet which has numbers and the names of the resources alongside of it, and these code numbers are used on the next sheets, which are our list of ceiling prices, a copy of which, on cost of living commodities was filed with the War Price and Rationing Board in this form—one book for each department labeled as it is here, and made up as it is here, to go with an affidavit from the buyer and the merchandise man, and this is a list of the ceiling price items to go with the supplementary list.

Q. The form of these sheets was made up by whom, do you know?—A. These sheets were made up by us, printed by the Hecht Company.

Q. And the cover and the insignia the same way?—A. This is all our own.

Q. I notice it was put together with staples. Why wasn't it bound up?—A. So we could add the supplementary lists—OPA could add them, and we could.

Q. This was done, I assume, for the purpose of making
373 this easy for OPA?—A. Yes; sure.

Q. Did the OPA require these lists to be typed?—A. No; they suggested typing, but said that writing is all right.

Q. Did that cause you any difficulty in typing?—A. Yes; we had to round up some typewriters and typists in order to get it done. It was quite a job.

Q. About how many people were there in your office at the time these were being prepared?—A. To the best of my recollection—I can not say, but there were about seven or eight.

Q. Did you find any typographical mistakes and things like that in these lists?—A. I did not, personally.

Q. Were there such, do you know?—A. Yes; I see some changes in the books, showing that there were some typographical errors, and we have found some since.

Q. Have you corrected some since you have written it?—

A. We corrected some and wrote to the War Price and Rationing Board and asked them to make corrections on the list.

Q. On their list?—A. Yes; on their copy.

Q. Who was your assistant on this—your first as-
374 sistant?—A. There was a young lady by the name of Miss Shelmidine.

Q. was there a Mrs. Sheridan working for you?—A. Yes; Mrs. Sheridan worked on these lists—the typing.

Q. Can you tell us what happened to Mrs. Sheridan?—A. Yes; Mrs. Sheridan left because she was expecting a baby.

Q. That required you to do what?—A. That required us to go over some of her work and get it through.

Q. During this time, did you get any instructions at any time from Mr. Dulcan or Mr. Davidow with respect to the compliance with the OPA regulations?—A. Their instructions were always to comply.

Q. I hand you a bulletin from Mr. Dulcan addressed to all merchandise men and buyers, dated June 29 and ask you what the purpose of that bulletin was.—A. This bulletin which was prepared by Mr. Dulcan and sent out through my office and returned to my office was a bulletin sent to all merchandise managers and buyers, asking them to be sure to sign this bulletin and show they are complying wholeheartedly with these—Maximum Price Regulations, and the purpose of it was again to impress them with the importance of compliance.

Mr. HORSKY. I offer this as defendant's exhibit T.
375 The CLERK. U.

Mr. HORSKY. U; excuse me.

(The document was marked "Defendant's Exhibit U" for identification and was received in evidence.)

By Mr. HORSKY:

Q. I hand you another bulletin handed to all merchandise buyers and ask you if you prepared that bulletin.

Mr. AUSTIN. What one is that?

Mr. HORSKY. I am sorry.

Mr. AUSTIN. That is July 14. All right.

By Mr. HORSKY:

Q. Did you prepare that bulletin?—A. Yes.

Q. What was the purpose of that bulletin?—A. The purpose of this bulletin was again along the lines of continuing to educate our buyers in compliance with the General Maximum Price Regulation and all other regulations, and again to impress them with the importance of doing the job correctly.

Q. Will your read that bulletin?—A. Yes. This is to all merchandise buyers from me. The heading is "Every Article In Our Store Must Have A Ceiling Price." "Ceiling prices for every item, whether a cost of living commodity or not, must be on file in the Price Control Office. Ceiling prices for most of the merchandise in your department were
376 established by the March lists which you submitted on the white and yellow copies of OPA No. 4.

"Recorders of any of the items on these lists need not be recorded again, but our OPA form No 7 must be made out for each new item not previously recorded, and each individual form is filled in. It is to be sent to the Price Control Office."

Mr. HORSKY. I offer in evidence defendant's exhibit V.

(The document was marked "Defendant's Exhibit V" for identification and was received in evidence.)

By Mr. HORSKY:

Q. Is it correct that the primary responsibility throughout this period for compliance with the OPA price regulations was on the buyers?—A. Yes.

Q. And it has continued to be on the buyers?—A. Yes, sir.

Q. Is it your judgment that that is the place where it should be?—A. It must be there.

Q. Could you explain that?—A. Well, the buyers are the people who handle the merchandise; know most about their merchandise. They are the people who make out their orders and they are the people who are responsible
377 for selling the goods.

Q. Then, am I correct in saying that these are designed to keep the people who are primarily responsible aware of their responsibility?—A. That is right.

Q. I hand you another bulletin dated July 17 from you directed to all merchandise managers and ask you whether you prepared that bulletin?—A. Yes, sir.

Q. Would you explain the purpose of that bulletin?—A. This bulletin explained to the buyers and merchandise men that all confirmations were to be stamped with this rubber stamp which we had prepared.

Q. I think the Judge's copy does not have the stamp. Will you read it?—A. "Acceptance of this order constitutes a guarantee by the vendor that the prices charged for merchandise covered by this order are not in excess of maximum prices permitted by applicable regulations of the OPA or any other duly authorized by government authority."

Q. Continue with your answer.—A. And the purpose of this was two fold: first, to put our vendors on notice that we expected them to comply with the regulations in dealing
378 with us and secondly, again as a reminder to the buyers that we were in compliance with the regulations and everybody must make every effort to comply.

Mr. HORSKY. I offer this in evidence, Your Honor, as defendant's exhibit W.

(The document was marked "Defendant's Exhibit W" for identification and was received in evidence.)

By Mr. HORSKY:

Q. I hand you, Your Honor, a copy of a paper entitled "Advance Release," and ask you whether that bulletin was prepared in the store.—A. Yes, sir.

Q. What is that bulletin?—A. That is a copy of a news release by the Office of War Information of the Office of Price Administration, which is a statement by Mr. Henderson as to the necessity for complying with the regulations and the importance of complying and the reasons for complying, and I felt that this would serve as another step in our educational program in our impressing the buyers with the importance of this, and therefore I prepared a copy of the Advance Release and set a copy to every merchandise manager and every buyer.

Q. And that was distributed throughout the store, is that correct?—A. Yes, sir.

379 Mr. HORSKY. I offer in evidence, Your Honor, defendant's exhibit X.

(The document was marked "Defendant's Exhibit X" for identification and was received in evidence.)

By Mr. HORSKY:

Q. I hand you, Mr. Etelson, a copy of a bulletin addressed to all merchandise managers from your office dated August 18. Do you have it? That is it. Did you prepare that?—A. Yes, sir.

Q. Will you explain what that is to the Court?—A. That is an explanation to all merchandise managers, and I think there was another notice to all the buyers along the same lines.

Q. Just a moment, Mr. Etelson. I will hand you another bulletin and ask you if that is the notice of the buyers to which you refer.—A. Yes, sir.

Q. Explain them both together, then, to the Court.—A. These bulletins explain to the merchandise managers and the buyers that we were placing on the invoice copy of every confirmation—that is, the blanket confirmations which had not

been used yet—these green stickers which we prepared again as a reminder and again in our educational program to the buyers that OPA 7's are to be made out and that every
380 new item must have a ceiling price.

Q. You prepared the form of the stickers yourself?—A. Yes, sir.

Q. And the sticker was placed on what?—A. The invoice copies of the confirmations—the blank copies which were still in my possession and had not been used—would be used hereafter.

Q. Which of the copies is the invoice copy? The copy that the buyer keeps?—A. No, the invoice copy is the copy that is signed by the buyer and countersigned by the merchandise manager and is the copy which goes through our records and ends up in the invoice office.

Q. Now, what did this sticker purport to do?—A. This sticker was a reminder and the sticker contained questions which the buyer was to ask himself and answer on here and follow through on.

Q. Well, if I read correctly it says, "Have ceiling prices been established and reported on every item in this confirmation?". If he checked that, I would take it the items had been checked by the buyer.

Mr. AUSTIN. Objection.

The WITNESS. Had been registered by the buyer.

Mr. AUSTIN. Object.

381 Mr. HORSKY. I will withdraw the question.

By Mr. HORSKY:

Q. Now, the purpose of this ticket was that the buyers would be required to indicate that he had either established a price—had a price established, or was establishing a price.—A. That is right.

Q. Where did those tickets go after the buyer made them out? Where did the invoice copy go?—A. The invoice went from the buyer to the merchandise manager, usually to be countersigned.

Q. And then where?—A. Then they went to the merchandise control office where they were registered, and then they went to the invoice office, where they were kept in there until the merchandise on the invoice came in.

Mr. HORSKY. Thank you.

I offer these two bulletins in evidence, your Honor, as defendant's exhibits Y and Z.

(The documents were marked "Defendant's Exhibits Y and Z" for identification and were received in evidence.)

Mr. AUSTIN. That is the eighteenth and twentieth?

Mr. HORSKY. Yes. I will make it merchandise managers Y, and for the buyers, Z.

382 By Mr. HORSKY:

Q. Now, Mr. Etelson, will you explain to the Court what Maximum Price Regulation No. 165 governed? You can refer to this.—A. No, Maximum Price Regulation 165 referred to Services.

Q. Will you explain—I am trying to hurry this, Your Honor, and I will ask for a general explanation rather than going into detail. Will you explain to the Court what it governed and how it governed? I could have him read it, but this will be simple.—A. The Maximum Price Regulation covered certain specific Services and set the prices of those Services at the highest price in March, or methods for establishing the price on Services which may have been inaugurated after March, or would be.

Q. I hand you a bulletin marked June 30, addressed to all merchandise managers and signed by yourself and ask you if that is the bulletin which you prepared in connection with that regulation?—A. Yes, sir.

Q. And does that list the kinds of things that it governs?—A. Yes, sir. This was an early bulletin. The regulation was later amended and there is a further bulletin on that and further work on that.

Mr. HORSKY. Thank you. I offer this in evidence as defendant's exhibit AA.

(The document was marked "Defendant's Exhibit AA" for identification and was received in evidence.)

383 By Mr. HORSKY:

Q. Will you explain, now, Mr. Etelson, just in general the procedure by which the store got into compliance with this regulation—what you did in the store to comply?—A. We prepared a list of our maximum prices in the various Services covered by the Regulation which we had in the store, and we filed it with the War Price and Rationing Board.

Q. Who prepared it?—A. It was prepared under my supervision by my assistant and by Mr. Morrison, who is in charge of most of these Services—supervises most of these services, together with Mr. Moss, who is the assistant store manager and the head man on Services in the store.

Q. I hand you, Mr. Etelson, bulletin No. 13 and a form also on the bulletin 13, and ask you if these are the supplementary bulletins and the form to which you referred in getting into

compliance with this regulation?—A. That is right. This is the bulletin and the form.

Q. And those forms were filled out and returned to your office?—A. Well, these were not filled out, because we found that after we had prepared the form we found it impractical to use it, and therefore, we used other methods.

384 Q. You did prepare the form?—A. Yes.

Mr. HORSKY. I offer this in evidence, Your Honor, as defendant's exhibits BB and CC.

(The documents were marked "Defendant's Exhibits BB and CC" for identification and were received in evidence.)

By Mr. HORSKY:

Q. Will you state for the record, Mr. Etelson, the date upon which this regulation was issued? You may refer to that Service.—A. Well, 165 was originally issued back in June.

Q. That is all that I want to know. Thank you. Well, let me ask you one more question. It has been amended since?—A. Oh, yes.

Q. Did you attend any meetings with respect to this regulation?—A. Yes.

Q. Will you tell the Court about what the meeting was?—A. Yes; one of the only clinics that I know of that the OPA has held in Washington on any of these regulations was held on Maximum Price Regulation 165. It was held out at the Brown School on Connecticut Avenue where they had invited people interested to attend, and I attended that meeting. It was one night during the summer.

385 Q. It was an evening meeting?—A. Yes; it was a night meeting.

Q. Was anyone else in the store with you?—A. No.

Q. Now, will you explain to the Court in general what the Maximum Price Regulation 177 was?—A. 177 is the men's and boys' clothing regulation.

Q. That did apply, I take it, to department 26 of the store?—A. Yes, sir.

Q. Which is one of the departments that the government has investigated in this case?—A. Yes, sir.

Q. I hand you a bulletin dated July 21, 1942——

The COURT. July?

Mr. HORSKY. Twenty-first. It is at the very end on the last sheet.

By Mr. HORSKY:

Q. (Continuing.) And ask you did you prepare that bulletin?—A. Yes, sir.

Q. What does it purport to be?—A. It it a brief of the regulations explaining to the buyers and the merchandise men who would be concerned with it and how the regulations operated.

Q. Let me ask you, Mr. Etelson: explain to the Court
386. in general, how you went about making these up. This regulation came out. What was the procedure by which you prepared that particular bulletin?—A. Well, the procedure was to get a copy of the regulation, read it, pick out the important material, eliminate all of the stuff that was not necessary and had no actual bearing on it outside of a legal one, I suppose, and put it in language that the merchandise men and the buyers would understand and could follow.

Q. Could you refer to the Service you have there, Mr. Etelson, and tell when this regulation came out?—A. This regulation appeared in the Federal Register on July 6.

Q. When was it to be effective?—A. July 11.

Q. In three days?—A. Yes.

Q Was it subsequently revised? What does the Service say with respect to that?—A Yes; there have been—it was corrected on August 5, and then there had been several amendments to the regulation.

Q. What was the general—again not going into detail—the general basis for pricing under this regulation?—A. The
387 general basis for pricing under this regulation was setting the price of suits at the highest March price for the same or similar garment, and on outer garments, which is topcoats and overcoats; setting the price at the highest price charged in September, October, and November of 1941, plus 40% on that portion which does not exceed $50.00, plus 8% of that portion which does not exceed $50.00.

Q. In other words, this to a degree, modified the prices which you had theretofore been charging under the General Maximum Price Regulation.—A. Yes.

Q. On outer coats?—A. Yes; on outer coats, in addition to which it explained a method for pricing one pants suits where they had previously been two pants suits.

Q. Did this regulation require the preparation of any lists?—A. Yes, sir.

Q. Will you explain that?—A. They required the preparation of lists on ceiling prices under Maximum Price Regulation 177—under this particular regulation.

388 Q. I refer you to the last sheet on this piece of paper you have here and ask you if that is the form which you prepared for the purpose of making out that list?—A. Yes, sir.

Q. This is the store form?—A. Yes, sir; it is our form.

Q. Known as OPA No. 12?—A. That is right.

Mr. HORSKY. I offer these in evidence, Your Honor, as defendant's exhibits DD and EE, the form being EE.

(The documents referred to were marked "Defendant's Exhibits DD and EE" and received in evidence.)

Q. I hand you another bulletin dated July 20th addressed to a number of people, Mr. Ethelson, and ask you if you prepared that?—A. Yes, sir.

Q. What was the purpose of that bulletin?—A. The purpose of this bulletin was to follow up the first one, and is a reminder to the departments affected that the lists had to be prepared and returned to my office on time so we could file with the War Price and Rationing Board.

Q. Could you explain who the people are that are
389 listed in that long column?—A. These are Mr. Dulcan and Mr. Davidow; Mr.——

Q. I don't mean all of them.—A. The merchandise managers and the buyers in the affected departments.

Mr. HORSKY. I offer this in evidence, Your Honor, as defendant's exhibit FF.

(The document was marked "Defendant's Exhibit FF" for identification and was received in evidence.)

By Mr. HORSKY:

Q. Will you explain again to the Court, Mr. Etelson, what 178 is?—A. Price Regulation 178 is a regulation on furs.

Q. This is applicable to the Hecht Company?—A. Yes, sir.

Q. This applies to some of the departments of the Hecht Company?—A. Yes, sir.

Q. I hand you a bulletin dated August 27th and ask you if you prepared that bulletin?—A. Yes, sir.

Q. Is that under this regulation?—A. Yes, sir.

390 Q. What was the purpose of that bulletin?—A. The purpose of this bulletin? This is a brief to advise the buyers in the fur departments how to function under this regulation.

Q. In general will you state the basis upon which this regulation prices the furs so the Court will understand the general nature of the provisions?—A. Yes; in general the basis upon which the furs are priced—we had to first prepare—find our costs and our selling prices for various types of furs and various sections for the last six months of last year, and we had to find our percentage mark-up of each one of those classifications.

We also had to find the highest price at which we had sold a garment in each one of those classifications, and under the regulation the maximum price of a fur would be the cost plus the mark-up on that classification of last year, provided it was

not higher than the highest price at which that garment was sold last year—that classification of garment.

Mr. HORSKY. Thank you. I offer this in evidence your Honor, as defendant's exhibit FF.

The CLERK. GG.

The COURT. GG.

Mr. HORSKY. Excuse me. I cannot get these numbers straight.

By Mr. HORSKY:

391 Q. I hand you, Mr. Etelson—this is the last one—a series of papers and ask you what those purport to be?—A. This is a brief of the regulation 210 which applied to Fall and Winter seasonal commodities, together with forms prepared for carrying out the regulation.

Q. This first sheet is a list of the commodities to which it applies.—A. When it was prepared—there have been a number of additions since then.

Q. But at that time it was prepared this was the list of the items to which it applied?—A. Yes, sir.

Q. That goes over three pages. The fourth page is a statement of the method by which the price was calculated?—A. Yes, sir.

Q. Will you explain generally to the Court the method adopted by this regulation?—A. I would rather read this.

Q. All right. Just a moment, Mr. Etelson. All right, sir. Explain it as simply and rapidly as you can.—A. The maximum prices for the commodities listed in this regulation are to be calculated as follows: First you must find both the average cost and the current cost for the item being

392 priced, and then their explanations of what average cost is and what current cost is. Then add to the lower of these two cost figures the initial percentage mark-up taken during the last six months of 1941 on that commodity, and there is an explanation of what "initial percentage mark-up" means under the regulation.

When this regulation came out there were basically two methods that could be used. One was that if the information was available, the records were available, you had to follow the business of finding the average cost and the current cost and the mark-up for last year on that particular commodity, and the second method was that if that information was not available, then you could use the department mark-up which made it much simpler. We got into this thing and it was a terrific job. When we got about half-way started, the regulation was changed because of various things that had happened, and then they gave you the choice of one or the other method.

Q. Will you explain as briefly as you can the procedure by which you compiled this information in the store. I notice there are a number of forms there?—A. Yes. We prepared this form 14–A which we issued to all of the buyers in the departments that had the type of merchandise that is under this regulation, and on this form the buyers had to list
393 for us the names of the resources and from whom they bought these types of commodities for the period from July to December 1941.

Q. When you say "resources," Mr. Etelson, you mean manufacturers?—A. Manufacturers or wholesalers or jobbers.

Q. Yes.—A. And then they returned this form to the office and we had a corps of girls draw these invoices from last year's files. Then the invoice, together with form 14–B, was returned to the buyers and the buyers had to fill out all of this information on form 14–B such as the name of the resource, the receiving date, the invoice number, the quantity, the unit cost, total cost and total retail, and return this form together with the invoice to my office.

When this was returned we sent them form 14–C, and on form 14–C they had to list the names of the resources—from whom they had bought the types of commodities listed under this regulation during the period from January 1st to August 26, 1942.

Q. How did that differ from form 14–A?—A. Form 14–A was for 1941 and this is for 1942, and then, when they sent this back we drew these 1942 invoices from our files and sent
394 those back to the buyers on form 14–D, and on form 14–D they had to fill out the information taken from the record of the purchases received from January to August 1942, such as the resource and receiving date and the invoice number and the quantity and the unit cost and the total cost, and then had to return that to the office with the invoices.

In the meantime we had to have the information on 14–B computed so that we could get the initial percentage mark-up on that commodity and apply it to the average cost that was found on 14–D.

Q. Who did the computing, Mr. Etelson?—A. Well, we had to send this stuff out to an outside comptometer organization because we did not have enough comptometer operators at that time.

Q. And did you have any of the comptometer operators at that time?—A. We had them in the store. They were busy with their own work, but we also had to bring them in—had to hire three or four comptometer operators from those agencies and rent comptometers.

Q. Do you now have a comptometer operator in your department?—A. Yes; we have one now.

Mr. HORSKY. I offer these in evidence, Your Honor.

395 I think they can all be marked as one exhibit—as defendant's exhibit HH. I think those are clipped together.

Q. Will you refer to that Service, Mr. Etelson, and state when this regulation came out—this regulation 210?—A. 210? It appeared in the Federal Register on August 28th.

Q. And when was it to become effective?—A. August 31st.

Q. Was that subsequently amended?—A. Yes; they changed that later on.

Q. On what date?—A. Well, they changed it so that if you had priced the item before August 31st, then you could continue to sell it at that price until September 16th or price it under that regulation up to this period.

Q. However, is it fair to say that the work had to be done rather rapidly?—A. Oh, yes.

Q. Let us go back to about the 1st of July again, Mr. Etelson. Do you recall hearing about a film that the OPA had prepared called "A retailer fights inflation?"——

Mr. AUSTIN. Object.

The COURT. I did not hear that.

Mr. HORSKY. Will you read the question, Mr. Reporter?

396 (The reporter reads the last question posed by Mr. Horsky.)

The COURT. You may answer.

A. Yes, sir.

Q. When you heard about that film, what did you do?—A. I called Richard Howell.

Q. Will you spell that?—A. I think it is H-o-w-e-l-l. I called him and told him that I would like to show the film to our executives—our executive staff at the merchandise clinic because it was in regard to posting, as I understood it, and I would like to have him come up and show me the film ahead of time, and if I thought it was appropriate, we would show it.

Q. Did he do that?—A. Yes; he brought the film and the machine and a record which goes along with it and showed it to me one evening at the store, and I arranged to have it shown at a merchandise clinic meeting.

Q. You saw the film yourself?—A. Yes, sir.

Q. Were any of the pictures in the film pictures of the

397 Hecht Company?—A. Yes, sir.

Q. Do you recall what ones there were pictured?—A. Yes. There was a picture of our men's furnishing depart-

ment on the main floor, a picture in there of our posting in the toiletries department on the main floor, and there was a picture in there of one of our furniture tags showing the method by which a ceiling price is indicated on the tag, to the best of my recollection.

Q. It was shown to the whole of the merchandise clinic?—A. Yes, sir; Mr. Blue and Mr. Holmes of the War Price and Rationing Board came down early—I think it was a Friday morning—and showed the film to all of our buyers and merchandise men and the executive staff.

Q. Do you recall along about the same period receiving a message from Mr. Davidow with respect to a message that he had received?

Mr. AUSTIN. Object.

The COURT. Overruled.

A. Yes, sir.

Q. What was his message to you?—A. His message was that the OPA asked to send a photographer to take pictures of our store.

398 Q. What were his instructions to you?—A. That I should arrange to have the photographer come up and take the pictures.

Q. Did you do that?—A. Yes; a Mr. Howland and Miss Louis.

Q. Did they take pictures?—A. Yes, sir.

Q. Were you with them?—A. I was with them a great part of the time.

Q. Do you remember what departments they took pictures of?—A. They took pictures in the furniture department; in the comfort and blanket department on the fifth floor, and they took pictures, to the best of my recollection, of the drapery department on the sixth floor, and I know they were on the seventh floor in the house furnishings department, but I am not positive at the moment that pictures were taken up there.

Q. Did you ever see those pictures later on?—A. I believe I saw them in Women's Wear.

Q. Do you recall a merchandise clinic, Mr. Etelson, along about the first of August, at which you had a discussion of the OPA requirements?—A. Yes, sir.

Q. Could you tell the Court about that clinic?—A.

399 Yes. That was one of the merchandise clinics for which I was responsible for the program, and I devoted the entire program to a discussion of price-control regulations. I spent about an hour, or longer than that, giving the executive staff the background of price regulations, the reasons for them, and gave them a general idea of the direction in which, so far

as I knew, the OPA was working, explaining to them the different methods by which each of the regulations worked. I had a large plaque about six feet, a reproduction of our OPA 7, and again explained to the people the use of it and how it was to be taken care of.

Q. Will you explain to the Court what the OPA form 7 is, to refresh his recollection?—A. The OPA form 7 is our form for registering new items—new merchandise.

Q. That is plaintiff's exhibit 4. Is this the form that you refer to?—A. Yes; this is it.

Q. You had that enlarged?—A. Reproduced and enlarged.

Q. How many people are there on the staff of the Price Control Office of the Hecht Company at the present time?

Mr. AUSTIN. Object.

The COURT. Overruled.

400 A. There are supposed to be about 27 or 28 people, but I have lost about five people since I have been in court here. I cannot keep track of the number of people at this moment.

Q. What was it, as near as you can estimate it, during the course of the summer—say July 1st to October 1st?—A. I would say it ranged between four to ten.

Q. It ranged between four and ten?—A. Yes. It is hard for me to say—depending on the amount of work to do.

Q. When did it increase to the present size, approximately? When did it begin to assume its present size of, say 25 or 28?—A. Well, it began to increase when we started working on this MPR 210 because we had to bring in this corps of comptometer operators and get people to work on this regulation.

Q. Were there any other reasons that caused it to increase?—A. Yes; the other reasons that caused the increase was—as a result of the visit of Mr. Fath and Mr. Kaplan.

Q. Will you explain what you mean by that to the Court? Why did that cause it to increase?—A. Well, as a result of their visit they pointed out certain errors to me and certain

401 things which we thought were all right and which we had a certain check on, but we evidently concluded our check was not sufficient, so we increased it so we could have a closer check.

Q. Up until the time Mr. Fath came into the store—which I think was about the 22nd of September—had you heard any complaints from the OPA with respect to the way the store was complying with either the General Maximum Price Regulation or any other regulation?—A. Never.

Q. Did you believe—what was your belief at that time with

respect to the compliance of Hecht?—A. My belief was that we were doing 95 to 98 percent of a complete job. I told Mr. Fath that the minute I met him.

Q. At the time this investigation started, Mr. Etelson, how did you first learn of it?—A. Why, I came back from my vacation on a Monday morning.

Q. When was that?—A. Sir?

Q. When was that?—A. I think it was the 28th of September. I think it was the 28th of September.

Q. Yes.—A. And I was called into Mr. Brown's office.

402 Q. Who is Mr. Brown?—A. Mr. Brown is the executive controller, and in Mr. Brown's office I met Mr. Fath and Mr. Webb and a Miss Mack.

Q. And you were told at that time that they were there to investigate the store?—A. Yes.

Q. What instructions did you receive there in regard to this investigation by these people from Mr. Brown?—A. To give them everything they wanted—100 percent cooperation.

Q. Was that the attitude that you did take throughout?—A. Positively.

Q. And was any request that they made during this investigation refused?—A. No.

Q. May I have plaintiff's exhibit 6?—I hand you plaintiff's exhibit 6, Mr. Etelson, which is entitled "Merchandise in Stock on October 6, 1942, but not on September ceiling price list." Have you made an examination of this exhibit?—A. Yes, sir.

Q. Have you made notes you would like to refer to in connection with this?—A. Yes, sir.

403 Q. Will you get them?—A. Yes, sir.

Mr. HORSKY. Get them for the whole department. Your Honor, would it be convenient to take a recess at this time? Mr. Etelson says he left his notes at the store and he says he could get them during the recess.

The COURT. Surely. We will take a short recess.

Mr. HORSKY. I thing five or ten minutes would be adequate.

(A recess was had from 11:20 a. m. to 11:40 a. m.)

(Mr. Etelson resumes the stand.)

By Mr. HORSKY:

Q. Mr. Etelson, I asked you, if I am correct, if you had made an investigation yourself of this exhibit 6, identified as 6-A, B, and C—three sheets?—A. Yes, sir.

Q. Is that the exhibit you have in your hand?—A. Yes, sir.

Q. Did you find any errors in that exhibit?—A. Yes, sir.

Q. Will you explain to the Court what they are?—A. They

are errors in the names of what they have listed here as the manufacturer or resource. There are some errors in
404 style number and there are a number of duplications to listing.

Q. How many duplications in listing do you find?—A. About nine or ten on here that I can see at the moment.

Q. Can you make it exact, please?—A. Twelve.

Q. Twelve duplications?—A. Yes, sir.

Q. How many of these items on these three sheets do you find in which there are errors of one sort or another?—A. Twenty in addition to the duplications.

Q. Twenty in addition to the duplications?—A. Yes, sir.

Q. Will you explain to the Court what the nature of those errors is—the first line across. Which is the first item on that exhibit?—A. The first line of this exhibit?

Q. Yes.—A. This is Kraft Barth, the manufacturer; Description 3 pieces 65 percent Rep. 35 cotton, No. 6406; Date on Price Ticket, 8–42, and Selling Price, $22.50.

Q. Were there any mistakes in that?—A. That is a duplication of an item which appears on another page.

405 Q. Is it correctly stated?—A. Yes, sir.

Q. Take the first one in which you find an error. Take the first line in which you find an error and explain to the Court the nature of the error.—A. Well, you can take the next item. They have listed here under Kraft Barth 3 pieces 65 percent wool, 25 percent reprocessed, 9 hair, style number 3833, and that suit is not Kraft Barth, it is from Schneider, Hofferberg & Mines, the style number is 6833 and not 3833 and it is duplicated on another page.

Q. And it is duplications of that character to which you have referred heretofore?—A. Yes, sir.

Q. Do you find any of these items actually listed?—A. No.

Q. They are not listed. In examining this exhibit, can you tell whether these items would have been items that were in stock in March, or items that came in after March?—A. Both.

Q. Both?—A. Yes, sir.

Q. From your examination, would you say—what
406 mistakes did the buyer make which would result in this exhibit?

Mr. AUSTIN. Object, please.

The COURT. You may answer.

A. Mistake in assuming that they are similar to other items that——

Q. (Interposing.) Let me strike that question and ask it more specifically. What forms that he should have filled out did he not fill out?—A. OPA 7.

Q. Just that one?—A. And including some of these in the OPA 4.

Q. So that the Court will be clear, will you explain what those two forms are again?—A. OPA 4 is the form used in listing March merchandise.

Q. That is the original?—A. The original form, and the OPA 7 is the form for new merchandise.

Q. Usually he is supposed to fill out for all items that come in subsequently?—A. That is right.

Q. Mr. Etelson, you notice that this is signed at the bottom, Ben Rose.—A. Yes.

407 Q. Who is Ben Rose?—A. Ben Rose is the buyer in this department.

Q. Do you recall the occasion when these sheets were given to you or Mr. Rose to check, as Mr. Kaplan testified when he was on the stand?—A. Yes, sir.

Q. Were they given to you or Mr. Rose?—A. Given to me.

Q. Do you recall how long you had to check them?—A. Several days.

Q. When were they to be returned? Do you remember, specifically?—A. Specifically they were to be returned to Mr. Kaplan and Mr. Fath on a Monday. Originally our arrangement was they were to be returned on a Monday morning.

Q. Did you, in fact, during the period that you had them, make a check of them?—A. Yes; I made a check as far as I could within the time that I had.

Q. Did you work with Mr. Rose on that?—A. Yes, sir.

Q. Did you find some mistakes there?—A. Yes, sir.

Q. Do you recall when Mr. Kaplan came to get them

408 back from you?—A. Yes.

Q. Could you explain what happened at that time?—A. Yes. Mr. Kaplan left these. I wouldn't permit the department to sign them without having an opportunity to check the information that was on here, and therefore, I asked Mr. Kaplan for an opportunity to check this.

I believe, in the presence of Mr. Dulcan, we promised Mr. Kaplan that we would try to have them ready for him on the following Monday. Mr. Rose, Mr. Gordon, the assistant buyer, and I worked the intervening days, including all day on the Sunday previous, and I found on Sunday that we wouldn't be able to complete the check.

I tried to reach Mr. Kaplan, and he was evidently in New York, and on Monday morning I called Mr. Kaplan at the office and he was not there.

He and Mr. Fath came in about noon on Monday and wanted the information. I told him I was certainly sorry I couldn't

complete the check. I did not want to give him incorrect information for their purpose or for ours, and therefore I wanted some time to check this information.

Both Mr. Kaplan and Mr. Fath were quite upset by that. They said they had spent quite a lot of time in the store; this thing was taking more time than they could devote to
409 it, and they wanted to see Mr. Dulcan.

We were having a luncheon that day in Mr. Dulcan's office in connection with a battery of windows for the Sea Bees which we had installed, and I took Mr. Kaplan and Mr. Fath to Dulcan's office, and then we took them to Mr. Sarazen's office.

Mr. Dulcan knew I had not completed it, and I told him I was not going to allow this thing to be signed unless we definitely had an opportunity to have it checked.

These gentlemen definitely wanted it, and Mr. Fath said, "If that is the way you feel about it, we will bring in 50 people and check everybody in the store and really get the stuff." Mr. Dulcan said, "I am as good an American as you are"——

Mr. AUSTIN. We will object to what other people have said.

Q. What other instructions did Mr. Dulcan give you?—A. Mr. Dulcan said to tell him everything as best as I can and finish up—not take any more time. I insisted upon at least taking another day, and we would not let them have it. I pointed out some corrections to them at that time which we made on the sheets, and we let it go at that.

Q. Did you instruct Mr. Rose to sign that?—A. I permitted him to sign it. I did not stop him.

410 Q. Did you know at the time that he signed it there were mistakes in it?—A. I did not know. I knew we had already found mistakes, but I did not know whether there were any more or not at that time.

Q. May I have the next—exhibit 7? Mr. Etelson, I hand you defendant's exhibit 7 and ask you if you have made an investigation of that exhibit?—A. Yes, sir.

Q. Have you found any mistakes in that exhibit?—A. No, there are no mistakes in this exhibit because this is a copy of our own information.

Q. I hand you defendant's exhibit 8 which is marked with three sheets, 8-A, B, and C. Did you make an investigation—excuse me, that is plaintiff's exhibit 8. Will you correct that, Mr. Reporter? Did you make an investigation of this exhibit?—A. Yes, sir.

Q. Did you find any errors in this one?—A. Yes, sir.

Q. Will you explain—just point out how many there were. Could you say?—A. At least a dozen.

Q. Will you point out one of them so we can under-
411 stand what kind of an error you are referring to?—
A. Yes.

In the case of the first three items on the page there, Schneider, Hoffenberg and Mines, 3 piece students' suits, they show the ceiling price of $26.50 on here, and this applies to coverts in the ceiling price list and not to the tweed suits which are the ones mentioned on the exhibit here.

Q. Thank you, Mr. Etelson. I notice also that there is some writing on some of these sheets—in fact, on each of these sheets initialed by B.R. Would this be a correction you found before the sheets were turned over to the Government?—A. That is right. These were corrections that we made up to the time we had an opportunity to check it.

Q. Now you heard Mr. Kaplan's testimony with respect to this exhibit, did you not?—A. I heard it; yes.

Q. The exhibit was introduced by the government with Mr. Kaplan's explanation being that there was a difference between the retail and the ceiling price list on these listed garments. Will you explain that to the Court again so that he will be clear what those last two columns would refer to? Excuse me, have you the exhibit before you, Your Honor?

412 The COURT. Yes; right here.

A. The retail on here is the retail taken from the confirmation—the retail price which was on the confirmation from which they took this information.

Q. Yes.—A. And the second column is the ceiling price which they tied up with this item from the ceiling price list.

Q. The retail would be that put down by the buyer on the confirmation on the date ordered, as has been described.—A. Yes; that is right.

Q. Now have you made an investigation as to whether or not the ceiling prices as listed or as alleged to be listed in this exhibit are proper or improper?—A. Have I made an investigation of it?

Q. Yes.—A. Yes.

Q. You have some notes of that investigation with you?—A. Yes.

Q. Let us take the first item. The first three items seem to be all the same. Did you make an investigation of those?—A. Yes, sir.

Q. Will you tell the Court what you found with respect to those items—the reason, in other words, why the retail is
413 $22.50 and the ceiling price list is $26.50.—A. Well, the ceiling price list of $26.50 does not apply to this mer-

chandise. The ceiling price which applies to this merchandise is $25.00.

Q. Will you explain to the Court how you determined that?—A. Yes.

Q. Have you the ceiling price list? I can get it for you. I hand you plaintiff's exhibit 3 for various sheets which is the price list for that department.—A. On page 1, line 12, there is listed there students' suits, covert, 3 piece, $26.50. These three items are tweed suits.

Q. What is the proper ceiling price on these items?—A. Well, it is merchandise sold for $22.50.

Q. When?—A. In February and March.

Q. Will you continue with your explanation as to what the investigation showed.—A. On April the 15th they were marked up to $25.00 to equalize with a similar suit which was in stock at $25.00 and for which the ceiling price was $25.00.

414 Q. Would you summarize for the Court, then, the results—what you concluded from your investigation of these items.—A. Well, the conclusion is that the buyer made the equalization because he did not want similar suits in stock at two different prices.

Q. Not what the buyer did or did not want to do, but what you found out as facts with respect to this.—A. The fact is that these suits sold for $22.50 in March and were marked up in April to equalize with another similar garment.

Q. The fact is that the ceiling price should be $22.50.—A. That is right.

Q. But they are not listed as $26.50 in ceiling price?—A. No, they are not.

Q. Now let us take the next series. I believe the balance of that, Schneider, Hoffenberg, and Hines, down to students' fleece coats, are also similar items. Did you make an investigation of this?—A. Yes, sir.

Q. Will you tell the Court what you discovered with respect to those suits.—A. The confirmation for this merchandise was marked "Fall," and the merchandise was retailed at $27.50 and

415 was marked at that price on February 10th. On April 15th 83 suits were marked up from $27.50 to $29.75, and the reason given on the mark-up sheet is "equalization."

At the bottom of the mark-up sheet there is a notation, "in moth-proof room warehouse." Twenty-two of the suits were probably brought up to fill the Easter rush.

Q. What was the highest price at which these suits were sold in March, or were they sold in March?—A. My investigation would show—I mean the conclusion of my investigation is that they were not sold in March.

Q. Then would you explain to the Court the basis upon which you reached that conclusion?—A. Yes. The confirmation for this merchandise was marked "Fall."

416 Q. What would that confirmation tell you?—A. This confirmation shows the style number of the merchandise, the cost, and the retail price.

Q. What does the notation "Fall" up here in red pencil indicate?—A. That indicates that it was bought for sale in the Fall.

Q. Would that be put on at the time it was purchased?—A. Yes; it was put on either at the time of purchase or at the time the goods came in.

Q. You have testified, I believe, that the mark-up sheet indicated that the merchandise was in the warehouse?—A. Yes, sir.

Q. Would you show the Court what that mark-up sheet looks like?—A. This is it.

Q. Will you show to the Court what you mean when you say it is marked "Warehouse"?—A. Yes; there is a notation at the bottom of the mark-up sheet that says "Moth-proof room warehouse."

Q. What would your conclusion be with respect to the proper ceiling price for these garments?—A. My conclusion is that the proper ceiling price for these garments is $29.75.

Q. Based on the fact that they were not sold in March?—A. Yes.

417 Q. And they could be or were compared with a garment that was sold in March at $29.75?—A. That's right.

Q. Do you know the garments with which they were compared?—A. Yes; they were compared with Piccarello and Singer garments, No. 8706, 8707, 8708, and 8709.

Q. Your Honor, I offer in evidence the sheets that Mr. Etelson has offered in confirmation, and the mark-up sheets. I would like permission to substitute photostats for some of those.

The COURT. No objection?

Mr. AUSTIN. None.

(The documents were marked "Defendant's Exhibits II and JJ" and received in evidence.)

Q. The next group, Mr. Etelson, is student's fleece coats. I think there are three of those. Did you make an investigation of that item?—A. Yes, sir.

Q. Do you take them all together or do you take them individually?—A. I have the three.

Q. The three together?—A. Yes.

Q. What did you discover with respect to that item as to the reason why the retail price is $22.50 and the ceiling
418 price is $25?—A. This goods came in and was retailed on the invoice at $22.50. However, on March 3 we marked up 48 pieces from $22.50 to $25.

Q. In March you said?—A. March 3; yes, sir.

Q. Would you show the Court the mark-up sheet which illustrates it? Is that the same one you had before?—A. No; this is another one. Wait a minute, maybe I have a copy of that.

Q. It is in that book. May I have that book please?—

Mr. JAMES. Yes, sir.

A. Sheet No. 2-4.

Q. Would you indicate to the Court the item that you refer to?—A. Forty-eight fleece coats—young men's fleece coats from $22.50 to $25.

Q. Would you show the Court which item that is?—A. Yes, sir; I might explain here that in connection with this the mark-up sheet is also marked in the warehouse. We don't know whether these coats were brought over to the floor stock in March or not. If they were they were naturally sold at $25 because they were marked up to that price and if they weren't they were brought over in August or September, and based on Maximum Price Regulation No. 177 the ceiling price would be $25.65.

419 Q. In other words, the explanation for the difference in this case between the retail price and the ceiling price was that they were marked up in March?—A. That's right.

Q. After they were received?—A. That's right.

I will offer in evidence, your Honor, Exhibit No. KK.

(The document was marked "Defendant's Exhibit KK" and received in evidence.)

Q. Now, without going through all the rest of these style numbers on this exhibit item by item, Mr. Etelson, can you summarize the results of your investigation? Have you prepared a summary of some sort or can you just run down through these and tell us in which instances, if any, you find evidence that the ceiling price is improper. You said that the ceiling price on the first item should have been $25.—A. That's right.

Q. No, it should have been $22.50.—A. It should have been $22.50. That's right.

Q. On the next item you said the ceiling price was properly $29.75?—A. That's right.

Q. And the next item was properly $25?—A. That's right.

420 Q. Could you run through the rest of them and indicate which ones are correct, and if you come to one that

is not correct will you explain the nature of the error?—A. The next five are correct. That's style No. 5524, 5521, 5522, 5523, and 3351.

Q. That's fleece school coats?—A. That's right.

Q. The ceiling price is proper?—A. That's right.

Mr. AUSTIN. I must object to that. That's a pure conclusion. There must be some evidence.

The COURT. I assume that Mr. Horsky expects to follow that up.

Mr. AUSTIN. The conclusion should be drawn from the evidence.

Q. May I explain it, Your Honor. I would like to make my position on this clear. I thought that I could simplify and shorten the testimony in connection with these documents by having the witness indicate typical examples of his investigation and then submit his conclusion with leave for the Government to cross-examine on any items they wish, of course.

The only way in which I can get the complete results of his investigation to you is either to go through them item by item, which is very time-consuming, or else have him summarize with leave for the Government to question any item he says is correct or incorrect, and ask him how or why and produce
421 the papers and all the rest of it.

I am perfectly willing to do that but I thought I could save the time of the Court by using this other method. If that is not agreeable, I am perfectly willing to go through with it, piece by piece. We have the papers here and they are available for cross-examination.

Mr. AUSTIN. I might also say, if the Court please, as I recall the testimony of Mr. Kaplan with respect to this particular department which we are now examining and all of this work of inspection, the investigation was done in connection with Mr. Rose, the buyer, and at that time the explanation was made that Mr. Rose had to go to these particular items to identify them because of his personal knowledge of them inasmuch as they were neither identified on the base period list with the style numbers, nor were these mark-ups identified; and I think the Court will appreciate that these two mark-ups that have now been introduced, neither of them contains any manufacturer's name or any style number.

And I think that inasmuch as the witnesses—officers of the store—both on direct and cross-examination have stated that the primary responsibility for compliance was in the buyers and that they were the only ones who could identify these commodities—the only ones who actually knew that if they are

going to seek to tie up these various items—it must be done by someone who has personal knowledge inasmuch as it
422 is very apparent on the face of the documents that they do not tie them up at all; and I think that the buyers should be called as they are the men who can give the best evidence in regard to these matters.

Q. Your Honor, Mr. Etelson is the price control administrator of the store and he has made an investigation of these items on these various exhibits, with the assistance of everyone in the store, of course.

I will have the buyer in this department on the stand if Mr. Austin wishes to identify these mark-ups. In any event he is going to be on the stand, and I will have him further identify these if necessary; but it seems to me that Mr. Etelson, under whose supervision the investigation of these exhibits was conducted, is perfectly competent to testify with respect to the story on these exhibits.

The COURT. I think it will be almost necessary for the witness to explain these answers when he says that they are incorrect—that the exhibits are incorrect. I don't quite know whether I understood you or not. Did you mean to intimate that this witness has talked to the buyers and he is now testifying from what they have told him?

Q. May I ask the witness a couple of questions, Your Honor?

The COURT. Yes.

Q. In making the investigation of these exhibits did you have the assistance of Mr. Rose?—A. Yes, Sir.

423 Q. Did he work with you through the office of investigation?—A. Yes, sir.

Q. And you together went through the store's records and found what you are testifying on?—A. That's right.

Q. He helped you in making your conclusions?—A. Yes, sir.

The COURT. But you are not reciting his conclusions?—A. Sir?

The COURT. You are not adopting his conclusions?—A. No, sir.

Q. Your Honor, there is no reason why there should be any doubt about it. The buyer is here in court and will be a witness and can identify these himself. I will ask him to in order to satisfy the Government. If they can come in tentatively in this fashion I will ask him later to identify each one.

The COURT. You may proceed. I think this witness will have to go further than to say that the exhibit is wrong. He will have to show why.

Q. Your Honor, may I be heard just a little bit more on that. This exhibit does not purport to say the ceiling price is er-

roneous. It purports to raise an inference that the ceiling price might be erroneous because the original price at which it was to retail is different.

424 Mr. Etelson's examination has been directed to the question whether that inference is justified in any of these cases. Now, as I say, it will take quite a lot longer to go through each of these items and to tell how he comes to the conclusion that the inference is or is not justified and I submit that to save the time of the court it would be a great deal easier, inasmuch as we are not going to contend, as you can see already, that all of them are wrong. Which one is wrong and which one is not wrong is not the material fact in this case. It is the number which are and the number which are not, so you will get a true picture of the extent to which this buyer made errors. I submit that it would be simpler to do it the way I suggest, but I am perfectly willing to do it any way Your Honor wishes.

The COURT. You must choose your own method of examining the witness, but my ruling would simply indicate that an answer that there was an inference that the exhibit is erroneous without explanation would not carry much weight.

Q. All right, Your Honor, thank you. Which item are you on, Mr. Etelson?—A. I beg your pardon.

Q. Which item were you explaining at the time?—A. I was on 5524, 5521, 5522, 5523, and 3351.

Q. Fleece school coats?—A. Yes, sir.

Q. What did you discover with respect to that item?

425 What was the retail price on this item, as indicated on the exhibit?—A. $15.95.

Q. And the ceiling price is listed as what?—A. $17.95.

Q. What did you discover as to the reason why those prices vary?—A. On March 3, 74 pieces were marked up from $15.95 to $17.95, and the reason given for the mark-up was replacement price. At the bottom of the sheet is the notation, "Merchandise found in moth-proof room in New York Avenue warehouse."

Q. May I interrupt you. In other words, the reason why the prices are different is that there was a mark-up in March, is that correct?—A. That's right.

Q. Could you identify that mark-up for the court?—A. Yes, sir. I think His Honor has it there. It is 2-4.

Q. Would you point it out to the court, Mr. Etelson?—A. Yes, sir; it is item No. 2 on this list.

Q. Then your conclusion is that the proper ceiling price is $17.95?—A. That's right.

Q. Did you make an investigation of the next two items—the Weiner-Katz "Big Fellow" suits?—A. Yes, sir.

Q. Could you explain to the court the reason why the
426 confirmation retail price is $17.95 and the ceiling price is $18.95?—A. The ceiling price on this suit is $17.95 and the $18.95 does not apply to that suit. There are two different Weiner-Katz suits, one at $17.95 and one at $18.95; and the $17.95 suit is never sold for any other price but $17.95.

Q. Then the $18.95 on the exhibit is an erroneous attribution of that ceiling price on this suit?—A. That's right.

Q. It is not listed at $18.95?—A. No.

Q. The next item, Mr. Etelson, is the Louis Saffer one-pants plaid suit. The retail price indicated is $25; the ceiling price, $27.50. Could you explain what you have found to be the reason for the difference in that instance?—A. The ceiling price on that suit is $25; $27.50 applies to another suit from Louis Saffer.

Q. Again, in other words, it is an erroneous ceiling price attributed to this suit?—A. That's right.

Q. And this suit has not sold for $27.50?—A. No, sir.

Q. Did you discover or did you find the basis upon which the confusion arose?—A. The $27.50 applies to style No. 6404.

427 Q. Is that on the list that you have there?—A. On the exhibit?

Q. The submitted cost of living list. Here is a copy.—A. Here it is. It is item No. 7 on the first page. Styles 6402, 6403, and 6404 at $27.50.

Q. Style No. 6400 is not listed at $27.50?—A. No, sir.

Mr. AUSTIN. Is 6400 listed?—A. No.

Q. Did you make an investigation of the next item, Mr. Etelson?

Mr. AUSTIN. Just a moment, Mr. Horsky, let me interrupt here. He says 6400 is not listed. How does he come to the conclusion he has reached?

Q. Will you explain Mr. Etelson, how you arrived at the conclusion of the proper price on this item—that the proper price on this item is $25?—A. Because it was retailed at $25 and there was never any mark-up on it.

Mr. AUSTIN. You are talking about 6404, aren't you?—A. No; 6400.

Mr. AUSTIN. 6400?—A. That's right.

Mr. AUSTIN. It is not on the ceiling price list, is it?—A. No.

428 Q. That was retailed in March at $25?—A. Yes.

Q. Did you make an investigation of the next item?—

A. By the way, they have "Walker" as the manufacturer of that suit. Saffer is the manufacturer. "Walker" is the model name.

Q. That has been corrected, I believe, on the copy that was introduced in evidence.

The COURT. It has been changed.

Q. Yes. Now, referring to the next item, Mr. Etelson, the retail price is $10.95 and the ceiling price is $11.95. Will you explain the reason why those two figures differ?—A. This item is listed in our ceiling price book at $11.95. The price on it in March was $10.95. There isn't any record of any mark-up taken on the item. I mean there is no explanation as to how this item became $11.95. There is no record of any mark-up on it. It is just possible that a few pieces of the suit were left in stock and may have gotten in with another classification of knicker suits which were marked from $10.95 to $11.95.

Q. The proper ceiling price should be $10.95?—A. $10.95; that's right.

Q. Did you make an investigation of the next group of items from the Alder Pants Company of tweed slacks
429 where the retail price is $5.99 and the ceiling price is $6.95?—A. Yes.

Q. What is your explanation of the reason for the distinction between these two figures?—A. The $6.95 does not apply to these slacks. This ceiling price of $6.95 is listed in our basic ceiling price list and refers to covert slacks from the Adler Pants Company.

Q. Would you indicate to the court where that appears on the ceiling price list?—A. Yes, sir. It is about the seventh item from the bottom on page two.

Q. What does it mean?—A. It reads, "wool slacks, 26–2"—that's what it looks like on here—and then under "Description" it says "covert, all wool, $6.95."

Q. The proper ceiling price is $5.99?—A. The proper ceiling price for the slacks shown on the exhibit is $5.99. And they have sold for $5.99.

Q. Will you explain how you arrived at that $5.99 price as the proper ceiling price?—A. Yes, this merchandise compares with another item—another slack—at $5.99 from the Rudd Manufacturing Company.

Q. Did you make an investigation of this next large group of items from A. S. Birsch—golf suits?—A. Yes, sir.
430 Q. In this case the exhibit shows a retail of $10.95 and a ceiling price of $11.95?—A. That's right.

Q. Can you explain the reason for the difference?—A. Yes.

these suits sold at $10.95 in March and were marked up in April to $11.95.

Q. What was the proper ceiling price on these suits—$10.95?—A. That's right.

Q. And the mark-up in April was improper?—A. That's right. Except this last item that they have here. That style No. 8192 is a different suit from these others. I mean there is no question about that garment. I think it is just in there by mistake.

Q. On the items where the last three columns on the exhibit are not completed—are they the same?—A. I take it that it is a continuation of the figures that were above it.

Q. There should be ditto marks?—A. That's right.

Mr. JAMES. Down to 8192?—A. Well, that 8192 is a different suit altogether. I don't think that belongs in there at all. The price on that suit is $12.95. I mean it doesn't belong to the same group that is shown above.

431 Q. The $12.95 is the proper price?—A. Yes, sir.

Q. On what basis do you arrive at that?—A. It is a different cost from these other suits and it was retailed at $12.95.

Q. In March?—A. When they came in; yes.

The COURT. The court will suspend now. We will continue at 1:30.

(The court was adjourned at 12:30 p. m.)

432 AFTERNOON SESSION

Mr. L. G. ETELSON, a witness called by and on behalf of the defendant, having been previously sworn, resumed the stand and testified as follows:

Direct examination by Mr. HORSKY:

Q. At the conclusion of the morning session you had got down to the A. S. Birsh items; the next item on the exhibit is Delux Wash Suit Company, Stocky Slack Sets, which shows a retail of $3.95 and a ceiling price of $4.50. This is on page 2 of this exhibit [indicating]. Did you make an investigation of that item?—A. I haven't been able to complete the investigation of this one, as I recall, because I haven't been able to get the complete information on it.

However, from the investigation that I have made, as far as I have been able to get it, the ceiling price on the Delux Wash Suit is $3.95, and on the Endel pants item is $1.95.

Q. In other words, the ceiling prices are improper on those items, so far as you know?—A. Yes, sir.

Q. All right, the next items are Students coats from
433 Kraft, scratched out on my copy of the exhibit; is that correct as to yours?—A. Yes, sir; the next one which is open is style 4417.

Q. Kraft Barth; the figure at retail is $17.95, is that correct?—A. It has been penciled in with a retail of $17.95, a ceiling price of $18.95.

Q. Have you made an investigation of that item?—A. Yes.

Q. What did you discover was the reason why the retail and ceiling prices differ with respect to that item?—A. This item, so far as we could find out, was retailed at $17.95, was registered at $17.95, in the ceiling price book on page 1, line 33, as 4400 range; and if the investigator found what he thought was the same outfit at $18.95 it may have been that the coat with a price tag of $18.95 was taken from a long two-trousers outfit or put on a long golf outfit by mistake.

Q. In other words, this item which is described in the column across [indicating] is properly priced at $17.95?—A. Yes, sir.

Q. And was registered at that price?—A. Yes, sir.

Q. Would you point out to the Court where the item
434 occurs in the ceiling price list?—A. It is the sixth item from the bottom of page 1, described as Husky Suits 26-19, style 4400, full-lined three-piece tweed, $17.95.

Q. You would conclude that the $18.95 is an improper attribution to the ceiling price as to this item?—A. That is correct.

Q. Let us take the next item, Mr. Etelson, No. 6404, from Louis Saffer Company, long Walker suits, in which the retail is listed at $25.00 and the ceiling price at $27.50. Did you make an investigation of this item?—A. Yes, sir.

Q. Would you explain the reason, if you discovered it, as to the discrepancy between the suggested retail price and the ceiling price?—A. Yes, sir. The confirmation for this item shows it as retailed as $25.00.

Q. Have you confirmation there?—A. Yes, sir. This is it right here [indicating]; the first item on there, 6404.

Q. What else did you find? Excuse me, is that the basis upon which the $25.00 figure would appear on this retail
435 column?—A. That is correct, taken from the confirmation.

Q. What else did you discover?—A. On the invoice which ties up with this confirmation the retail on here [indicating] is $27.50, and the merchandise was marked at that price in February.

Q. Can you explain to the Court from that invoice that you have how you identified this item?—A. They took this information from the confirmation on this retailed at $25.00, but it

was retailed on there if it is a new shipment and the same garment came in, No. 6404, and was retailed for $27.50, and it is listed in our basic ceiling price list at $27.50.

Q. First, what do you consider from your investigation would be the proper ceiling price?—A. $27.50.

Q. On what basis?—A. On the basis that it was marked and in stock on that basis, at $27.50.

Q. As may be seen from the invoice?—A. Yes, sir.

Q. Is that the invoice which you are referring to? [in-
436 dicating]—A. Yes, sir.

Q. Would you show the Court how you determine that?—A. The style number is in the first column down below and the retail is in red ink, which is all put on by the invoice clerk.

Q. Can you tell from that exhibit, Mr. Etelson, what time that was marked at that price?—A. Put on there February 20, I believe. It is pasted on, on the apron, attached to the invoice.

Q. Would you indicate to the Court what you are referring to?—A. Yes, sir; it shows here marked February 20 [indicating], and then the person who marked it at that price.

Q. Does the marker who marks it use the price on the confirmation or the price on the invoice to mark?—A. The goods are marked from the invoice.

Q. And the invoice indicates the price at which she marked it?—A. That is right.

Q. May I offer these two in evidence, Your Honor? These are Defendant's Exhibits LL and MM.

(The documents were marked "Defendant's Exhibits LL and MM" and received in evidence.)

437 Q. The next item, Mr. Etelson, is an item from Wearbest Coat Company, long Camel coats. The retail is indicated at $25.00; the ceiling price list indicates $26.50. Would you explain—did you investigate this item?—A. Yes, sir.

Q. Would you explain what you found as to the reason why the retail and the ceiling price differ?—A. These coats were retailed on the confirmation and on the invoice at $25.00. They were received and marked at that price in April. We didn't have this merchandise in March.

Q. Do you have the invoice? Does the confirmation show when they were received?—A. The confirmation shows that they came into the warehouse on March 31.

Q. Would you show the Court as to how you know that from the confirmation?—A. Yes, sir. There is a date up here [indicating] March 31.

Q. All right, Mr. Etelson, continue.—A. And these coats were retailed at $25.00 and they were marked up on May 11 from $25.00 to $26.50 because they compared with another coat on which the ceiling price was $26.50 in stock.

438

Q. Your conclusion is that the ceiling price is properly put, is it?—A. That is right; yes, sir.

Q. The next items are suits from Louis Saffer Company on which the retail is indicated at $27.50 and the ceiling price is indicated at $28.50, style number 9104. Did you investigate this item?—A. Yes, sir.

Q. Would you explain why, so far as your investigation revealed, the two columns, retail and ceiling price are different?—A. Yes, sir. This merchandise was retailed on the confirmation and on the invoice at $27.50 and was marked at that price on March 12. On March 27 a mark-up was taken from $27.50 to $28.50 with the reason given as replacement prices, and the mark-up sheet shows that the mark-up was taken right on the floor.

Q. Do you have that mark-up sheet?—A. Yes, sir.

Q. Would you show the Court the item that you are talking about and also how you know it was taken from the floor?—A. Yes, sir. This is the mark-up sheet [indicating]; it is the second item here, $27.50 to $28.50 [indicating] and it is marked "on the floor." The date is March 27, and this is the date following that up [indicating].

439

Q. May I offer that mark-up sheet in evidence, Your Honor? That is sheet 27, sheet 27, mark-up sheet 27. There is another item here.

(The document was marked "Defendant's Exhibit NN" and received in evidence.)

Q. There is another item from Louis Saffer Company also, gabardine suits, style 9105, on which the prices are shown as $25.00 and $26.50. Did you investigate that item?—A. Yes, sir.

Q. What did your investigation show as to the reason for the distinction between those columns [indicating] with respect to that item?—A. My investigation showed that this merchandise was retailed on the confirmation and on the invoice at $25.00 and was marked at that price on February 9. On March 27 these suits were marked up from $25.00 to $26.50; the reason given was replacement prices, and the mark-up sheet shows that the mark-up was taken right on the floor.

440

Q. Am I correct in saying this is essentially the same explanation as to the previous item?—A. That is right.

Q. Is the mark-up sheet the same?—A. Same mark-up sheet.

Q. Would you show it to the Court?—A. Yes, sir. It is the first item on here [indicating].

Q. Then your conclusion of that with respect to the, or both of these suits is that the proper ceiling price is the price listed in the ceiling price column?—A. That is right.

Q. The next two items on my copy of the exhibit are scratched out; is that correct?—A. Yes, sir.

Q. The next item is two suits from Wearbest Company, couverts, 6600 and 6500, at which the retail is given as $25.00 and the ceiling price at $26.50. Did you investigate that item?—A. Yes, sir.

Q. What is the explanation you could determine for the difference?—A. The exhibit sheet shows that these two style numbers as taken from confirmation 47,763. This is evidently an error by the investigator as these two style numbers
441 are not listed on this confirmation.

Q. Do you have the confirmation?—A. Yes, sir. The number of the confirmation is 44763, which is the one that is on the exhibit.

Q. Would you hand that to the Court? What did you discover with respect to these items? Were you able to identify them?—A. Yes, sir; these two style numbers are on confirmation number 8561.

Q. Would you make a note on that exhibit in light pencil of the proper confirmation number? Is that all right, Mr. Austin? (No response noted.)

Q. Continue, Mr. Etelson; and these were retailed on the confirmation and on the invoice at $25.00 and were marked at that price?—A. These were retailed on the confirmation and on the invoice at $25.00 and were marked at that price when received in February and March. On March 11 a mark-up was taken from $25.00 to $26.50. The reason given on the mark-up sheet is replacement value, and there is also a notation on the mark-up sheet showing that the mark-up was taken on the floor.

Q. Do you have that mark-up sheet?—A. Here it is; yes, sir.

Q. Your conclusion is that the proper ceiling price
442 on this item is——A. $26.50; yes, sir.

Q. I offer this confirmation and this mark-up sheet in evidence, Your Honor. That is mark-up sheet No. 25. The confirmation is OO and the mark-up is PP.

(The documents were marked "Defendant's Exhibits OO and PP" and received in evidence)

Q. The next item on this exhibit, Mr. Etelson, is this suit from Sanders A. Levinahn, not identified; with retail at $21.00

and ceiling price at $21.50. Did you investigate that item?—A. Yes, sir.

Q. What was the result of your investigation?—A. This particular suit is mentioned in the exhibit here [indicating] is a boy's husky suit, consisting of coat, vest and two long trousers. This merchandise was retailed on the confirmation at $21.00.

Q. Have you the confirmation?—A. Yes, sir. It is this last item [indicating], $21.00.

Q. Does the confirmation show the style number?—A. No, I think it just says "Husky suits" on it. However, the
443 retail entered on the invoice is $21.50, which is evidently a clerical error in the invoice work.

Q. Have you the invoice?—A. Yes, sir.

Q. Would you indicate that to the Court?—A. Right here [indicating]; retailed at $21.50, that last item. The merchandise was marked at $21.50 on March 7 which is indicated on the invoice over here, sir [indicating], on March 27.

Q. In other words, there was a mistake, a clerical mistake in transposing the price from the confirmation to the invoice?—A. That is right.

Q. But it was marked in March?—A. Yes, sir.

Q. And it was actually priced at $21.50 in March?—A. That is right.

Q. I offer that confirmation and the invoice in evidence, Your Honor; QQ and RR.

(The documents were marked "Defendant's Exhibits QQ and RR" and received in evidence).

Q. The next item, Mr. Etelson, is Sol——A. I think that should be Sol Duhovney, or some such D-u-h-o-v-n-e-y.
444 Q. And that is indicated as retailed at $14.95 and a ceiling price of $15.95?—A. That is right.

Q. Did you investigate that item?—A. Yes, sir.

Q. Are those items to be taken together or are they separate [indicating], the two items from Sol Duhovney?—A. Taken separately.

Q. What did you find out with respect to the reason for the distinction between the two prices in respect to the first item?—A. This group of merchandise was retailed on the confirmation and on the invoice at $14.95, and was marked at that price on March 26, and on April 15 they were marked from $14.95 to $15.95, and the reason on the mark-up sheet was equalization with another suit.

Q. Your conclusion would be that the proper ceiling price was $14.95?—A. That is correct.

Q. And that this mark-up was improper?—A. That is right.

Q. What was your conclusion with respect to the Sol Duhov-

ney suit similarly priced, $14.95 and $15.95?—A. This suit was retailed on the confirmation and on the invoice at $14.95 and was marked at that price on March 26.

445 There has been no mark-up taken on this suit, and so far as we can find any record of it, it has never sold for any other price other than $14.95.

Q. In other words, the $15.95 ceiling price attributed to this was attributed to it in error?—A. That is right. This item is listed in our basic ceiling price list on page 1, line 37, at $14.95.

Q. Would you indicate that to the Court, please?—A. It is listed here [indicating] next to the next to the last item on the first page, and is listed as boys' suits, 26–8, which identifies it as Sol Duhovney, tweeds, casimir; and it reads here [indicating] one knickers and it should be "one knicker and one long."

Q. It isn't a proper listing?—A. That is right; it is $14.95.

Q. But the price is $14.95?—A. Correct.

Q. The next item, Mr. Etelson, is an item from Solzberg Hat Company, students' hats, and the retail is $3.75 and the ceiling price is $3.95. Would you explain what your investigation revealed in respect to the reason for this?—A. Yes, sir. These hats were retailed on the confirmation at $3.75.

446 Q. Do you have the confirmation?—A. Yes, sir.

Q. Will you show it to the Court?—A. Yes, sir. There is probably another clerical error there; the retail price on the invoice was $3.95.

Q. Will you indicate it to the Court?—A. And they were marked at that price on March 27, and they were never sold at any price but $3.95.

Q. In other words, it is a similar mistake to the one that has been described where there was a clerical error in transposing the price from the confirmation to the invoice?—A. That is right.

Q. But the clerical error occurred during this period?—A. Yes, sir. That is correct.

Q. And set the price. I offer these in evidence, your Honor, as Defendant's Exhibits SS and TT.

(The documents were marked "Defendants Exhibits SS and TT" and received in evidence.)

Q. The proper ceiling price, Mr. Etelson, is then what? For this hat?—A. 3.95.

Q. The next item is an item from the Arkoz Pants

447 Company; is that the correct name?—A. Arkay Pants Company, A-r-k-a-y.

Q. The exhibit indicates that the retail price on the confirmation is $8.98 and the ceiling price is $9.95. Did you investigate those items?—A. Yes, sir.

Q. What did your investigation show with respect to these items?—A. Well, the investigation shows that this merchandise was retailed on confirmation at $8.98. We can't locate, I haven't been able to locate the invoice for this goods, but from the notations on the confirmation I think it can be asumed that these goods were received and marked in February because the dates are February on here.

Q. Would you indicate to the Court the basis of these conclusions?

Mr. AUSTIN. I don't like to have the witness use language like that. He "assumes" this. I don't think he should put that sort of thing in the record.

Mr. HORSKY. I agree. Would you state to the Court the basis on which you have reached the conclusion, if you have reached the conclusion, that the invoice, that the goods,
448 were marked at $8.98 in February?—A. Because there are the the two dates showing receipt of this merchandise, showing receipt of two shipments; and one indicates February 11 and the other one February 28.

Q. Would you show the Court where those dates appear on the invoice?—A. Yes; right here [indicating].

Q. What else is there?—A. It is a notation on the confirmation that this merchandise was purchased for an anniversary sale; on March 20 a cancellation of reduction marking these suits from $8.98 to $9.95 was put through, that is after the sale.

Q. Have you that cancellation of reduction form with you?—A. Yes, sir.

Q. Is that the cancellation of reduction form to which you referred [indicating]?—A. Yes, sir; this is 3626.

Q. Would you indicate to the Court the item on this form to which you refer?—A. Yes, sir; it is the next to the last item [indicating].

Q. Your conclusion then is what, as to the proper ceiling price?—A. The proper ceiling price is $9.95.

449 Q. Because that was the price in March?—A. Yes, sir.

Q. Your Honor, I offer in evidence the confirmation of the cancellation of reduction.

(The document was marked "Defendent's Exhibit UU" and received in evidence.)

Q. Why was the item marked up on a cancellation of reduction form, Mr. Etelsen?—A. That was an error. It should have been marked up on a mark-up form.

Q. What is the usual reason why you would use the one in one case rather than the other?—A. A cancellation of reduction

form is used ordinarily where the merchandise has been marked down, and then is marked back up to the price from which it is marked down, and then at that time the policy is to use a cancellation of reduction form. A mark-up form is used where the retail is changed from a lower price, changed up.

Q. Thank you. The next item on the exhibit is a group of four style numbers in Kraft Barth coats indicating a retail of $13.88 and a ceiling price of $14.95. Did you make an investigation of these four items?—A. Yes, sir.

Q. And did you discover with respect to the reason for the difference between the retail and the ceiling price?—
450 A. This merchandise was retailed on the confirmation and on the invoice at $13.88, which were received and marked at that price on May 13. On May 22—the mark-up from $13.88 to $14.95 to equalize with similar garments that we had in stock in March at $14.95.

Q. What was the garment with which it was equalized?—A. The garment gotten from Levinson Bros.

Q. Do you have the OPA 7 form which was filled out on that item with you?—A. No; there was no OPA 7 form filled out at the time; I have the comparison.

Mr. AUSTIN. You say no OPA form was filled out at that time?

The WITNESS: That is right.

Q. Your conclusion as to the proper price ceiling was what?—A. $14.95.

Q. The next item is an item from Weinert Katz, two pants, long, with a retail $17.95 and a ceiling price at $18.95. Did you make an investigation of that item?—A. Yes, sir.

Q. What was the conclusion you reached as to the reason for the difference between the retail and ceiling price?—
451 A. Confirmation 8560, which is referred to in this exhibit [indicating], doesn't show any style number 5600, which is referred to in this exhibit.

Q. Have you the confirmation with you?—A. I believe I have it here.

Q. This is the confirmation referred to on the exhibit [indicating]?—A. That is, you referred to confirmation number 8560 and style number 5600, and there is no style number 5600 on this confirmation [indicating].

Q. Under those circumstances what investigation did you make?—A. Well, I tried to imagine what the investigator meant.

Q. And what did you conclude?—A. And I concluded that the investigator probably referred to style number 5617 which

we received in February and March and retailed at $17.95, and on October 25 we checked our stock and found several of these suits on the rack at $17.95, so that they have never sold at any other price. In January of this year we did receive another group of suits, of Weinert Katz suits, which were retailed at $18.95. It is a different stock.

Q. Your conclusion is that the only suit that you could think might tie up with this was properly priced at $17.95?—
452 A. That is right.

Q. And $18.95 was a price which didn't apply to the suit listed, or to the suit which you thought it might be?—A. That is correct.

Q. In any event, your investigation did not reveal any improper ceiling price so far as you could determine with respect to this item?—A. That is correct; with the error in the exhibit here we did the best we could.

Q. The last item on this exhibit is a three piece covert suit from Picarrello & Singer retailed at $14.95 and a ceiling price at $16.95. Did you make an investigation of this one?—A. Yes, sir.

Q. Will you explain why the price differs?—A. First of all, confirmation number 47608, which is the one they refer to in this exhibit, doesn't have any style number TR516, which is the one listed in this exhibit. It is style T12–516.

Q. Would you explain to the Court how the error might have occurred?—A. I don't know how it might have occurred. This is the confirmation, and they listed it as style
453 TR516, and there is no such style number on there.

Q. Excuse me; Mr. Etelson. Your Honor, I forgot to offer this prior confirmation in evidence. May I offer it now? That is Defendant's Exhibit WW. I offer this confirmation number 47608 in evidence as Defendant's Exhibit XX.

(The documents were marked "Defendant's Exhibits WW and XX" and received in evidence.)

Q. Assuming, Mr. Etelson, that the style referred to was T12–516 instead of TR516, which it seems may be the answer, what did your investigation reveal with respect to that item?—A. T12–516 was retailed at $14.95 on the confirmation and on the invoice, and was marked at that price on March 11. There is no record of any mark-up on this item.

Q. So far as you could determine, if that is the item referred to, the proper ceiling price is $14.95?—A. That is right. The description of the exhibit sheet is "Covert, three piece; coat, vest and pants." On the same confirmation this description

is connected with style V8516 which is retailed on the confirmation and on the invoice at $19.85 and was marked at that price on March 11.

Q. But so far as you know there is no ceiling price
454 listed for T12-516 at $16.95?—A. No.

Q. And your conclusion as to the proper ceiling price on that item is what?—A. $14.95.

Q. Your Honor, if it is agreeable with counsel for the plaintiff I would like to return to Mr. Etelson's department, the buying department, and withdraw Mr. Etelson and put the buyer for the department on the stand to complete the statement with respect to our investigation of this exhibit for his department. I would be perfectly willing for the Government either to cross-examine Mr. Etelson about the department now or at the conclusion of his testimony.

The COURT. What is your desire? Do you have any objection?

Mr. AUSTIN. I have no objection, if Your Honor please, to their following that procedure.

The COURT. Will you step down a minute, please?

Mr. AUSTIN. Just a moment, if the Court please; we haven't decided whether we want to cross-examine him.

The COURT. I see.

Mr. AUSTIN. With respect to this particular department we will pass cross-examination of Mr. Etelson at the moment.

The COURT. Very well.

455 Mr. HORSKY. I will call Mr. Ben Rose.

Mr. BEN ROSE, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name to the reporter?—A. Ben Rose.

Q. Where do you live, Mr. Rose?—A. Washington, D. C., 521 Randall Street.

Q. Are you employed by the Hecht Company?—A. That is right.

Q. What is your position there now?—A. Buyer of the boys' and students' department.

Q. That is department No. 26?—A. 26.

Q. Have you been in that position during the entire course of 1942?—A. That is correct.

Q. How long have you been the buyer for that department?—

A. Approximately eight years.

Q. How long have you been employed by the Hecht Company?—A. About the same time.

456 Q. About eight years?—A. That is right.

Q. Where were you employed prior to that?—A. New York City, R. H. Macy Company.

Q. What was your position there?—A. Associate.

Q. In the same type of work?—A. In the same type of work, boys' department.

Q. Do you recall, Mr. Rose, the investigation of your department by the gentlemen from the OPA?—A. Yes.

Q. And what were you instructed by the executives of the store with respect to your attitude toward the investigation and the investigators?—A. Give them the fullest cooperation.

Q. Did you do that?—A. To the best of my knowledge; yes.

Q. Was that equally true of other people, the other people, in your department?—A. I believe so. My assistant at the time when I wasn't there gave his full cooperation to those people.

Q. What was your assistant's name?—A. Mr. Milton Gordon.

Q. Mr. Rose, plaintiff's exhibit 6 is a list of items stated to be merchandise in stock on October 6, 1942, but not
457 on a submitted ceiling price list.

Mr. Etelson has testified that those items are not on the list. Can you tell the Court why those items were not listed?

Mr. AUSTIN: If the Court please, we at this time wish to object to that question, which we feel is immaterial, on the same grounds as we have expressed in our previous motions. The good faith of the department is not in question here.

We feel that the sole question before this court is whether or not the defendant did violate, and the other witness, Mr. Etelson, furthermore has testified that these items are not on the list, and that is the purpose for the exhibit being introduced in the plaintiff's case, and we do not feel that any reasons, excuses, or other statements that the witness for the defendant might make are material at this time, particularly in view of the evidence of the preceding witness for the defendant.

The COURT. The evidence will be received and accepted to that effect. Do you have the question in mind?

A. Yes, sir. The reason these were not listed at the time was my understanding, whether it is right or wrong—I had similar merchandise in stock at the time at those prices, and when

merchandise came in and they were at the same prices I thought that would be sufficient.

458 Q. Would you distinguish, Mr. Rose, between the original list and the garments subsequently received and explain to the Court your understanding of what you were supposed to do, both with respect to the listing in May and with respect to the OPA number 7 form that applied to garments that came in later?—A. At the time, the way I understood it——

Q. (Interposing.) Which time are you referring to now? Let us talk first about the original list. Would you explain that to the Court first?—A. When the notice came down that all ceiling prices were to be listed, and I followed through on that but did not list the various manufacturers in the same price line. If we had two manufacturers, for instance, at $22.50, I listed those two though I might have six, but I did not list all six, feeling that the ceiling price of $22.50 was sufficient, therefore not listing the balance that I would have.

Q. When items came in subsequently to the preparation and compilation of this original list, would you explain to the Court how you understood that these OPA 7 forms were supposed to be filled out? Do you understand my question?—A. I would like you to clarify that a little for me.

Q. Explain to the Court the understanding that you had with respect to the necessity of filling out forms for

459 newly received merchandise.—A. The way I understood it later on; at first I did not quite get the drift of it, because there were so many things involved; regulations were coming one after the other.

Q. Just answer my question. What was your understanding at the time?—A. When a new piece of merchandise comes in to fill out this OPA 7.

Q. You understand that is the thing to do now?—A. That is right.

Q. Some of these items on this exhibit did come in in August and September, according to this exhibit. Why would they not appear on this list?—A. Evidently that was my misinterpretation; a new item——

(Interposing.) What was your misinterpretation?—A. That new items similar to those already there would not have to be on; I hadn't carried it out before.

Q. All right, Mr. Rose; and that is true of these various items on that exhibit that you now hold in your hand?—A. On that exhibit; that is correct.

Q. Mr. Rose, Mr. Etelson has testified with respect to inves-

tigations that he made of these various exhibits. I hand you defendant's exhibit 8, A through C, and ask you——

Mr. AUSTIN. Plaintiff's exhibit.

Q. Plaintiff's Exhibit 8, A through C, and ask you if you are familiar with that exhibit; you helped prepare that?—

460 A. That is right.

Q. Mr. Rose, Mr. Etelson testified that with respect to the first three items, Schneider, Hoffenberg three-piece suits, that mark-up was taken on sheet 211 on April 15 from $22.50 to $25.00, and that the $26.50 is a different ceiling price for some other items. Is this the mark-up sheet which is identified as applying to those items?—A. That applies to the Schneider, Hoffenberg suits listed on the sheet at $25.00; $26.50 is incorrect; from $22.00 to $25.00.

Q. And the first line of this sheet [indicating] is the one that refers to that?—A. The first three items.

Q. Thank you.—Mr. Etelson also testified that with respect to the next group of Schneider, Hoffenberg, Mines, that those suits, $27.50 to $29.75—that this same mark-up sheet 211, defendant's exhibit JJ, refers to those suits.—A. That is correct.

Q. The second line on this sheet [indicating]?—A. That takes in all these numbers, the $27.50 to $29.75; about 83 suits.

461 Q. Mr. Rose, Mr. Etelson also testified that mark-up sheet number 24, defendant's exhibit KK, applied to the next items on this exhibit, students' fleece coats; marked up from $22.50 to $25.00. Is that the item that appears on that sheet [indicating]? That is the item which refers to this exhibit [indicating]? That item on this exhibit?—A. That is correct; they all came from the same manufacturer.

Q. Mr. Rose, the next items on that exhibit are students' fleece school coats, or, rather, school fleece coats?—A. You just got through with the students.

Q. Fleece school coats?—A. That is correct.

Q. Mr. Etelson testified, I believe, that mark-up sheet number 24, defendant's exhibit KK, dated March 3, applied to the items marking those up from $15.95 to $17.95.—A. That is correct.

Q. Which item on this sheet [indicating] is that?—A. N-74, item number 2, on this mark-up sheet; the second item [indicating], boys' coats.

462 Q. Mr. Rose, referring to the items on page two of this exhibit, Mr. Etelson testified that the 9104 and 9105 suits, from Louis Saffer Company, were marked up on March 27, on mark-up sheet No. 2-7, defendant's Exhibit No. NN. Will you identify this mark-up sheet and tell us whether that

refers to those items?—A. That is one from $27.50 to $28.50. The second line of this mark-up does refer to these suits.

Q. The first line on this same mark-up sheet refers to second item?—A. Second item from $25.00 to $26.50.

Q. Mr. Rose, Mr. Etelson testified that on the third page of this exhibit with respect to the suits from Arvoz Pants Company and Arkay Pants Company, that the change in price from $8.98 to $9.95 occurred on March 20 and was marked these by evidence of this cancellation sheet, Exhibit VV. Will you identify this item on this report?—A. That refers to Arkay pants. The name is printed incorrectly. It should be Arkay. It does refer to this cancellation. It should be a mark-up instead of cancellation. That was an error my assistant made at the time.

Q. It does refer to those suits?—A. It does refer to those suits.

463 Q. Mr. Rose, I hand you plaintiff's Exhibit 7, entitled "mark-ups." Have you made an investigation of the items on this sheet with Mr. Etelson?—A. Yes.

Q. You have some material here that you would like to refer to in connection with the questions I am going to ask you about these items?—A. I believe you have them over there.

Q. Looking at plaintiff's Exhibit 7, the first item appears to be a mark-up of a coat from $14.88 to $16.95, taken on April 14. Will you explain to the Court what your investigation revealed as to the propriety of the price of $16.95 with respect to the OPA regulations?—A. Yes. These coats we purchased were brought in for special promotion during the slow months, being January and February.

Q. Of 1942?—A. Of 1942. We had originally sold these during the whole year, during 1941, at $16.95. At that particular time we thought we would give some incentive to sell these coats for a little less, and therefore they were brought in at the price of $14.88.

The reason for that is that if it was brought in at
464 the original price it involves a lot of work to mark those goods down and then mark them back again. So I thought it would be better to mark them at the sale price and later on mark them at the sale price, and later on to mark them up.

Q. The confirmation recorded at the price of $14.88?—A. That is right.

Q. Then, how did they reach the price of $16.95?—A. A mark-up was taken after the advance sale was over.

Q. When was that?—A. The new shipment is covered by confirmation and recorded in invoice. The costs marked up

on sheet 2–9, $14.88, were then put in line with the new merchandise coming in at $16.95.

Q. Wasn't there a prior mark-up from $13.88 to $14.88?—A. That is right.

Q. The mark-up from $14.88 to $16.95 was on what sheet?—A. 2–9.

Q. Is this the sheet to which you refer?—A. That is correct.

465 Q. Which item on that sheet?—A. The first item on this book here, that was the balance left at those prices.

Q. What was the date of that mark-up?—A. It is on there, Judge [handing article to the Court], left-hand corner.

The COURT. April 14th.

Q. I will offer this mark-up sheet in evidence, Your Honor, as defendant's Exhibit YY.

(The document was marked "Defendant's Exhibit YY.")

Had the merchandise been marked up in March to $16.95—sold in March at $16.95 is what I meant to say?—A. There was a new shipment that came in March at $16.95.

Q. When was that marked?—A. On March 25.

Q. Do you have the papers that show that?—A. You probably have the invoice which show they were received on March 25.

Q. I will offer this in evidence, Your Honor, as Defendant's Exhibit ZZ.

(The document was marked "Defendant's Exhibit ZZ.")

466 Your conclusion, Mr. Rose, is that the suits were sold in March at $16.95?—A. Definitely.

Q. Let's take the next item on this exhibit. I think that all of these palm beach suits can be treated as a unit; is that not right?—A. I think so.

Q. You investigated those with Mr. Etelson?—A. That is right.

Q. Those show mark-ups taken on the same date, from various prices, $1.00 to a fewer dollars higher. Will you explain what your investigation revealed?—A. Towards the end of the season Palm Beach allows us to return merchandise for reconditioning, and we do that toward the end of the season.

Q. This is the summer season?—A. That is correct. Around the middle of September we get a listing of nationally advertised prices, which is one price, I believe, throughout the country, effective as of September 21, 1941, for the 1942 selling season.

Q. You sell them always at that price?—A. Always at one price.

Q. What was the price at which those were to be sold
467 in this 1942 season?—A. The prices we mark this merchandise up, listed on the proposed retail price.

Q. On the exhibit as proposed retail price?—A. Yes. Here is the listing [handing to the Court] that they send down as effective. This is the list we get every year, effective '41.

Q. That is the list for '42?—A. That is it.

Q. I offer this in evidence as Defendant's Exhibit AAA.

(The document was marked "Defendants Exhibit AAA.")

Had anybody wanted them, they would have been offered in March at these higher prices?—A. That would have been the price.

Q. Let's take the next item, the 2 Golf Suits, marked up on April 15. I show you, Mr. Rose, plaintiff's Exhibit 8, sheet A and B, and ask you if these are the same items?—A. Those are the same items.

Q. Which appear to be from A. S. Birsh?—A. That is right; from $10.95 to $11.95.

Q. Carry-over on Sheet 8-B?—A. That is right.

468 Q. That runs the items down how far, Mr. Rose? You had better take this and see how many items are duplicated on the two sheets so we won't omit any. Just indicate, if you will, which items on Defendant's Exhibit 7 have already been explained on Defendant's Exhibit 8?—A. That would take in approximately 13 items on that sheet.

Q. I want you to indicate on Plaintiff's Exhibit 7 which items already appear on Exhibit 8.—A. That will take in line 65.

Q. Does it take in the next line on Exhibit 7?—A. No.

Q. Have you made any investigation of that item?—A. Yes.

Q. Will you tell the Court what you discovered with respect to the proposed retail price, the mark-up?—A. These were brought in at $10.95, and as the Easter rush was over we started to checking our stocks around there, and we found there were two prices of similar merchandise, and, therefore, the mark-up.

Q. Let me get it clear? Brought in at $10.95 or $12.95?—A. We are referring from $10.95 to $11.95.

469 Q. We have already had those explained and you have testified. Let's take the next line, from $12.95 to $13.95, of Plaintiff's Exhibit 7. Will you explain that mark-up?—A. We had a similar merchandise in stock at $13.95, and we felt——

Q. (Interposing.) Will you tell the Court your understanding of the ways in which you thought you could mark goods at the time you took these mark-ups? Will you explain to the Court why the goods were not marked down on the effective date of the General Maximum Price Regulation?—A. I felt

there was an equalization left at those prices. Afterwards we were investigated by Mr. Kaplan, and he mentioned that, and they were marked back, both that and the $10.95. And to satisfy myself I checked from my physical stock on the $10.95 picture, which was marked up to $11.95, and found that only approximately four to six suits at the $11.95 price had been sold.

Q. When you used the word "equalization," on a mark-up sheet, what were you referring to; what did you mean?—A. If I had purchased suits in March, paid a little more for the fabrics, and so forth, and labor was going up when I re-
470 purchased; so in March they would have to retail a little higher and, therefore, I took what I had and marked them up for those prices. That was my personal belief.

Q. You believed on May 18, when the Regulation became effective, that those didn't have to be marked down?—A. That is what I thought.

Q. You understand that is not correct?—A. Now I understand that is not correct.

Q. This was one of those items that you misunderstood or didn't mark down for that reason?—A. That is right.

Q. Now, the next item on this Exhibit 7, Mr. Rose, is 2 Golf Suit, marked up from $14.95 to $15.95. Does that appear on Plaintiff's Exhibit 8, page 3, from the Sol Duhavney Company?—A. That is the same item.

Q. The next item on Plaintiff's Exhibit 7 is 2 Golf Suit, marked up from $11.95 to $12.95. Did you investigate that item?—A. That $11.95 to $12.95; offhand, I can't say.

Q. Let me see if I can refresh your recollection. I will pass that for the moment, Your Honor, leaving it open.
471 The next item is Cadet, mark-up from $16.95 to $17.95. Did you make an investigation of that item?—A. Could I see the reference mark-up book? I can't remember all these things.

Q. That is marked up on April 15, I believe.—A. There, again, we had suits in stock at $17.95, and they were equal in value, and therefore I marked those up to equalize what we had rather than have two different types and two different prices.

Q. Again, you didn't mark them down because of your misunderstanding?—A. Until we were told it was incorrect, and then we marked down.

Q. The next two items are student suits, mark-up from $22.50 to $25.00, and from $27.50 to $29.75?—A. That is a repeat on that large sheet.

Q. Will you indicate which one is on Plaintiff's Exhibit 8?—A. That is the item on this last sheet here [indicating].

Q. Referring to the first items on Plaintiff's Exhibit 8, Student's Suits from Schneider, refers to practically 12 lines.
472 The next item on Plaintiff's Exhibit 7, Mr. Rose, is Gaberdine Slacks, mark-up from $4.50 to $4.99. Did you make an investigation of that item?—A. There, again, was an equalization. We had some at $4.99 which had similar content; therefore, the mark-up.

Q. Were the slacks on sale in March?—A. No.

Q. Therefore, your investigation showed that you could mark them up to similar merchandise?—A. Yes.

Q. That would be a proper mark-up?—A. I think it would.

Q. You compared them with something you had in March?—A. Similar content.

Q. Is that true of the next item, the other gabardine slacks, from $7.50 to $7.95?—A. Those we had in March at $7.95. There were two shipments of one order. I believe the first shipment came in at $7.95; and the second, $7.50. For that reason I can't explain why one was $7.50. Sometime during the course of the day we may have overlooked that $7.50,
473 or $7.95, but the original shipment came in at $7.95. I believe you have both of those bills and dates.

Q. You think the proper ce'ling price is $7.95?—A. There was that that came in the 18th which was marked at $7.95. This came in April 23, which was later. So the original shipment was marked $7.95.

Q. So there was an error made in making one of these confirmations?—A. Yes. I took the mark-up to equalize the original shipment.

Q. I think you testified that these were on sale in March. Will you look at those bills and refresh your recollection?—A. I was referring to April. That was my error.

Q. You compared them with some other items you had on sale in March to establish the $7.95 price?—A. Yes.

Q. I offer these two invoices into evidence as Defendant's Exhibit ABB and CCC.

(The documents were marked "Defendant's Exhibit BBB and CCC.")

The next item on Plaintiff's Exhibit 7 is Camel Hair Topcoat, mark-up from $25.00 to $26.50 on May 11. Did you
474 make an investigation on that item?—A. Yes. We had a similar garment to that in Covert.

Q. Will you explain to the Court what you discovered, elaborating your previous answer to some extent?—A. We had similar type of coat at $26.50, which was a Covert topcoat. These camel hair coats were over at the warehouse.

Q. They were not on sale in March?—A. They were received

in February and March. These Covert topcoats originally retailed at $25.00. On March 1st the Covert topcoats were marked up to $26.50.

Q. That is the item that immediately follows that?—A. That is right. One was Camel Hair, and one was Covert.

Q. Let's take that item first, because you referred to that. What was the mark-up sheet on that item?—A. Was sheet 2-5.

Q. Do you have that?—A. Yes.

475 Q. Will you indicate to the Court the mark-up on this item?—A. Covert coat was marked up on March 11.

Q. From $25.00 to $26.50?—A. Yes.

Q. Mr. Rose, this exhibit indicates there was a mark-up on May 11 from $25.00 to $26.50 for the same topcoat?—A. That was true. These were in our warehouse. As we were selling these coats we filled in sizes from the warehouse which were marked at $25.00, and we marked them up to equalize those we had in March.

Q. In other words, you were bringing them over and marking them up as you brought them to the store?—A. That is right.

Q. This mark-up has already been offered in evidence as Defendant's Exhibit No. PP.

Let's go back to the previous line in the exhibit, with respect to the Camel Hair topcoat. First, were those on sale in March? Do you have the confirmation or the invoice to tell when they were received?—A. These came from the Wearbest Coat Company and retailed in February at $25.00, and the mark-up was taken in March at $26.50.

Q. On what mark-up sheet was that?—On mark-up 2-5.

476 Q. This mark-up sheet applied to the following item, Covert topcoat. What about the Camel topcoat?—

A. Those were marked up on May 11, and we equalized the March Ceiling price of the Covert coats, which is a similar garment, and the valuation and the cost was the same.

Q. These Camel coats were not on sale in March?—A. No.

Q. Your Honor, I offer in evidence mark-up sheet No. 2-14, Defendant's Exhibit DDD, to which the witness has just referred.

(The document was marked "Defendant's Exhibit DDD.")

Your conclusion, Mr. Rose, is this $26.50 is a proper ceiling price?—A. That is right.

Q. Now the next item, three sport coats. Would you prefer to take them separately or all together?—A. I believe I would rather take them separately.

Q. Let's take the first item, sport coats, mark-up from $13.88 to $14.95?—A. Those were brought in at that particular price, as I explained recently. Rather than have double work

by pricing them at their correct price, then marking them, "sale price $13.88." We did have similar garments of
477 the same content at $14.95 in February and March.

Q. These were not on sale in March?—A. No.

Q. You marked them up to the similar garment you had in March?—A. That is right.

Q. Would you state for the record what that similar garment was?—A. It was a plaid, 100% wool, sport coat. We had them in February and March.

Q. These are the same, the next item, sport coats, mark-up from $13.95 to $14.95?—A. I believe they were blue sport coats that were equalized in the regular price of $14.95.

Q. Were these on sale in March?—A. I believe not.

Q. Do you have the invoice there?—A. No; I was trying to get hold of it.

Q. I think you may have it?—A. These came in on May 9th, and they were marked on May 9th.

Q. They were not sold in March?—A. No.

478 Q. Is this [indicating] the invoice which refers to these items?—A. Two of them. Maybe either would be. They came in May.

Q. Both of these were received the same date, or approximately the same date, both in May?—A. Both in May.

Q. I offer these in evidence as Defendant's Exhibit EEE and FFF.

(The documents were marked "Defendant's Exhibit EEE and FFF.")

Now, Mr. Rose, you have stated that immediately upon being informed or upon learning of your error in failing to mark down these suits which were on sale in March, but marked up to equalize on other goods on sale in March, you marked them down. When did you mark them down?—A. When I was told it was incorrect.

Q. When was that, approximately what time? Can you fix the date?—A. Not off-hand; it was right after meeting Mr. Kaplan, and when those things were straightened out we were told it was incorrect. I told my assistant at the time to mark those goods back, which was done.

Q. Mr. Rose, your signature appears on these various
479 exhibits that you have been handling, Plaintiff's Exhibit 7, 8, and on Plaintiff's Exhibit 9 on each page, does it not?—A. That is right.

Q. Would you tell the Court the circumstances under which you signed these papers?—A. I signed these at the time when the sheets were placed before me. I had gone over a number of the items with Mr. Kaplan, and certain things I wasn't quite

sure of at the time. I would like to have had more time. Then I went over some various things with Mr. Etelson when I had more time and was settled. When I was working with Kaplan, the various things going on on the floor, and trying to work with him at the same time, my mind wasn't quite clear. I was trying to do the best I could. I was left on my own resource to take care of various things. Some things I may have said to him were wrong. He called on Monday and said, "you have got to sign these papers." We had only got half way investigating these sheets, and I signed them; but I believe it was a little under protest.

480 Q. You had worked all day Sunday?—A. I worked all day Sunday trying to clarify some of these things I had gone over with Mr. Kaplan, which wasn't clear to me at the time.

The COURT. That will be all at the present time. We will take a recess.

(Whereupon a short recess was held.)

481 Mr. HORSKY. We have no further examination of Mr. Rose, Your Honor.

The COURT. Will you cross-examine him now, then?

Cross-examination by Mr. AUSTIN:

Q. Mr. Rose, do you recall when Mr. Kaplan came into your department at the Hecht Company?—A. The exact date I don't recall.

Q. What is your best recollection of it?—A. I believe it was in November, I am not quite sure.

Q. You think it was in November?—A. It was November or the beginning of December.

Q. November or the beginning of December?—A. The exact date I did not take any notice of.

Q. And when you established your ceiling prices, that is the prices that appear on the ceiling price list for your department, you got those off the pink copies of the confirmation, did you not?—A. No. The ceiling prices—at that time we went over our pink copies and then went to our stock in one department and in the boys' department we took a physical stock of the ceiling prices.

Mr. HORSKY. Could you speak a little louder so the Court can hear you?

482 The WITNESS. There is all one department, called boys' department, and then a students' which are separated by another department. In the young men's department, in order to know which manufacturers we purchase certain types of merchandise from, we went to our pink copies, and when we got the names of various manufacturers we went to our

stocks to see what the prices were. We did the reverse in the boys' department. We took that from our physical stock, the prices they were marked, list our ceiling prices.

By Mr. AUSTIN:

Q. Then you listed your ceiling prices as the prices that were on the stock at the time you went through the department and took off the list?—A. That is right.

Q. Now, then, you testified here the merchandise which has come in after you filed your base period price list, did you file any, or turn over to Mr. Etelson, rather, any of the store's OPA forms No. 7?—A. At that time I believe I explained.

Q. Just answer the question first, did you or did you not?—A. No.

Q. All right; now, then, I believe you said at that time you did not understand it was necessary for you to do that?—A. That is correct.

483 Q. Now, then, you were getting new merchandise in constantly; were you not?—A. Yes.

Q. And Mr. Etelson had delivered, or someone in the store had delivered, to you some of these OPA Form Number seven had they not?—A. That is right.

Q. And you had received, had you not, the various bulletins that had come down from the store from Mr. Etelson and Mr. Levi with respect to what you were to do to comply?—A. That is correct. Can I verify that a little?

Q. What is that?—A. Can I answer that a little further?

Q. Yes.—A. All those bulletins were coming down so fast that I didn't have a chance to read all of them for the simple reason, as I said, our turnover of help was complete. I had to keep training people on the floor, trying to take care of OPA which was coming in as fast as it possibly could. And, by the way, the boys' department came under every regulation that came out—143, 210, 177, maximum price, and 242. It was coming in so thick and fast it was humanly impossible to take care of it, and take care of the selling end at the same time.

Q. Those other regulations, however, did not come in
484 until after the "General Max."?—A. They were coming in thick and fast.

Q. Yet you don't know when they came in?—A. No. As I said, I was not watching dates or anything like that. I was trying to take care of both things.

Q. Your primary interest was to sell merchandise, was it not?—A. No, at that time—I was trying to cooperate with the management, to do the best we could.

Q. Have you seen, are you familiar with this green sticker, Mr. Rose?—A. Now, yes.

Q. And you have been familiar with that for some time, have you not?—A. That is right.

Mr. HORSKY. Will you identify the exhibit?

Mr. AUSTIN. I did not, no. This is the green sticker which was attached to the invoice copies in your confirmation book after August 20th—Defendant's Exhibit Z.

By Mr. AUSTIN:

Q. Did you mark that, each time, to the effect that you had established a ceiling price on all merchandise received since that date?—A. Received since—I didn't get that question.

485 Q. On all merchandise since August 20th which you have received in your department, did you mark those green stickers showing that you had——.—A. Offhand, I would say I did not mark them all.

Q. You did not mark them?—A. No.

Q. Now, then, Mr. Rose, how long was Mr. Kaplan in your department after he started the investigation?—A. The amount of time I don't exactly know. It was quite some time, maybe a week or ten days; I am not quite sure.

Q. Now do you recall when it was that he took off, that is, you and he together, this list of merchandise that was in stock on October 6th?—A. It was on a Saturday in my office and I was trying to do the best I could with him at the time with the records I had.

Q. You say that this list of merchandise in stock, which is Plaintiff's Exhibit # 7, you made up in your office on a Saturday morning, is that right?—A. I would like to see that to make sure. I mean I can't just do a thing from memory.

Q. I beg your pardon, that is Plaintiff's Exhibit # 6.—A. I believe these were taken from my pink copies, if I recall.

486 Q. Those were taken from your pink copies?—A. Yes; which at times are incorrect.

Q. Which at times are incorrect?—A. That is correct.

Q. Now, then, if this exhibit says, as it does, this represents merchandise in stock on October 6th, would you say that that was probably the date that Mr. Kaplan was there, rather than some time in November or December?—A. Possible; that I am not quite sure of. I did not take exact note of dates.

Q. All right. Now, then, Mr. Rose, how long did it take on that day to get this list off of your pink confirmation?—A. I should say approximately about four or five hours; I am not quite sure as to the time.

Q. Four or five hours?—A. Yes, we were trying to do two or three things at one time, trying to work with Mr. Kaplan and trying to care for the floor.

Q. Was this done in the early part of his investigation of your department, or in the latter part?—A. There were so many investigations, I don't recall.

Q. There were so many investigations?—A. Yes.

Q. Who else was investigating, the WPB?—A. Part of it was started with my assistant.

487 Q. What was that?—A. Part of it was started with my assistant, and I came in and I finished up with Mr. Kaplan.

Q. You finished up?—A. That is right.

Q. But you said you did take this.—A. What is that?

Q. You said you did take this off of your pink confirmations.—A. As far as I recollect, yes.

Q. All right. Now, then, do your recall talking with Mr. Etelson and Mr. Kaplan in Mr. Etelson's office at the inception of this investigation?—A. When I met Mr. Kaplan in his office two or three times.

Q. How about the first time, remember that?—A. Yes.

Q. Now, then, do you have any idea when you took this list off so far as it relates to the first time you met Mr. Kaplan?—A. No; I have not.

Q. You have no recollection of that at all?—A. No. There were so many things going through my mind at the time, I don't recollect.

Q. Now, then, do you recall how long you and Mr.
488 Etelson had this sheet after it was made up?—A. About a day and a half.

Q. About a day and a half.—A. Before I signed that.

Q. That was before you signed it?—A. I mean a day and a half before I signed it with Mr. Kaplan.

Q. How long was it between the time you made it up and the time that you signed it?—A. I didn't make it up; Mr. Kaplan made that up. I signed it.

Q. You went over, you gave him the list, did you not?—A. That is right.

Q. How long was it between the time you were sitting in your office and took this information off your pink confirmations and the time you signed it?—A. I think we took those on a Saturday, the pink copies, and on Monday I think we signed those papers—on Tuesday morning.

Q. You signed the papers on Tuesday morning?—A. There was a Saturday and the lapse of Sunday, when I tried to clarify some things. We worked all day Sunday and came in Monday

and were asked to sign those papers. At the time we felt we would like to check a couple things because a lot of things were not clear, and on Tuesday we signed the papers.

489 Q. He brought this back to you on Monday, and on Tuesday you signed it, is that right?—A. That is right.

Q. You didn't have this over Sunday, is that right, or did you have it over Sunday?—A. The various items that were checked, tried to look up in our mark-up books, and mark-down books to try and verify some of the things where we had made mistakes.

Q. Now, were you looking at your mark-up and mark-down book with respect to these items?—A. To all the items that were checked.

Q. To all the items?—A. Yes. Some may have been in there, some not.

Q. Did you sign this exhibit, Mr. Rose, at the same time you signed the statement that you gave Mr. Kaplan?—A. No.

Q. You did not?—A. No.

Q. How long—or, which did you sign first?—A. Those lists.

Q. You signed these lists first. Did you sign these lists all on the same day?—A. No.

Q. You did not. Which one did you sign first, do you

490 remember that?—A. No.

Q. You don't remember the order in which you signed?—A. Absolutely not.

Q. You have no recollection?—A. I am afraid not.

Q. You have no recollection as to how long before you signed the statement you signed any of these exhibits?—A. I wouldn't like to say, because I am not sure.

Q. Was it a week?—A. It may have been a week, it may have been two, I don't know.

Q. It might have been longer than that?—A. It may have been longer than that.

Q. Mr. Rose, I will hand you Plaintiff's Exhibit #8, A, B, and C, and ask you if you recall when that exhibit, when you and Mr. Kaplan secured the information for that exhibit?—A. Whether these were taken from the pink copies or not, I am not quite sure.

Q. You don't know whether those were taken from the pink copies or not?—A. I am afraid I couldn't tell you certain.

Q. From what other source of information would they be taken if they were not?—A. They could have been taken from the physical.

491 Q. But you don't know now which you did?—A. No; I would hate to commit myself to say one way or the

other; I am not quite sure. You want the truth, you are getting it.

Q. You said you did not get quite through all of these sheets in checking them, is that correct?—A. That is correct.

Q. Which one didn't you get through?—A. Let me make that statement, recheck it; when I checked it with Mr. Kaplan, there were lots of things that were not clear; at the time they seemed clear, and then certain things I felt should be rechecked.

Q. Yes, and you were with Mr. Kaplan, either you or Mr. Gordon, when he got this information on these three exhibits?—A. That is right.

Q. And when comparisons were made and identifications attempted to be made with items that were found on your confirmations or in stock with your base period price list, they depended upon you and Mr. Gordon to identify those, did they not?—A. That is right.

Q. Where there were no style numbers?—A. That is right.

Q. And they had no other way, did they, of determining the identity of those items?—A. That is right.

492 Q. And if there are any errors on these sheets in that respect, those are errors of yours and Mr. Gordon's, are they not?—A. Not all; no.

Q. Not all?—A. No; I would say at times when we pulled out things we were trying to recall back to March what we had; it was a little hard trying to think back, when it was taken in October, as far back as March.

Q. But at any rate those errors are not errors that Mr. Kaplan or the investigator——A. That I can't say for sure. He may have made some, and I may have made some.

Q. You called out or identified the particular items for him?—A. Right now I am afraid I couldn't identify them at the time I may have done so.

Q. You couldn't?—A. I don't know which was right and which is wrong right now.

Q. But you are very certain of those items which you have identified on these various mark-up books?—A. Those, yes, now that we went over them I checked back.

493 Q. You are positive of those?—A. I would say yes.

Q. None of those in the mark-up books, none of those items have style numbers, do they?—A. At that time it was not required to put style numbers——

Q. Those mark-up books do not have style numbers listed, do they?—A. No.

Q. And you are of the opinion that you are much better qualified now to identify those articles than you were when Mr. Kaplan was in the store?—A. I did not say that. When

I sat down quietly and began to go over things, I knew those were definite things which we may have overlooked. As you stated, some of these coats I knew definitely that was the only type of coats we had at the time at the warehouse.

Q. These items here, Mr. Rose, referring to——A. Suits.

Q. Items 4 to 15 on Exhibit #8 of the Plaintiff, do you know whether those items were sold in March or not?—A. That is a possibility, they were in storage and things were coming over; some could have come over in March. Of that I am not quite sure; it was during that period, the Easter season was on, rush period, lots of things could have happened that I can't answer for.

494 Q. You don't know whether it was sold in March or not?—A. We had this price line in March; whether some of those suits came over I can't say for sure.

Q. Those represent some of the items that you may have put on your price list by price line?—A. That is right.

Q. Whether you had them in stock or not?—A. That is right.

Q. Now, then, these fleece school coats, Mr. Rose, do you recall those?—A. Yes.

Q. They are marked up on the third of March?—A. That is right.

Q. And the mark-up book shows that those were found at that time in the mothproof warehouse?—A. That is correct.

Q. Were those marked there in the warehouse?—A. Yes.

Q. Do you know whether those were sold in March or not?—A. No.

Q. You do not know?—A. They were not sold in March.

Q. They were not sold in March? Was that another item which you chose to put on your ceiling price list because

495 you had something else of a similar price line?—A. When we took those lists, it was around August, ceiling prices.

Q. It was around August?—A. When we took those ceiling price lists. What was the date when we took the ceiling price lists?

Q. You think it was in August?—A. No, before that; I am not quite sure.

Q. But you don't know when it was?—A. No; offhand, I can't say.

Q. All the corrections on these sheets were made after you had checked them, were they not, Mr. Rose?—A. Which corrections?

Q. Referring to Exhibit #8, A, B, and C, of the Plaintiff. That is your signature, is it not?—A. That is right.

Q. Is that your handwriting?—A. No.

Q. It is not? How about that?—A. It is not my handwriting.

Q. Do you recall that change being made there from flannel to tweed?—A. I think I mentioned some of the time; I don't know at the time, I don't know who.

496 Q. It was done at your suggestion, however?—A. That is right.

Q. And you signed that and initialed it, did you not?—A. That is right.

Q. Now, then, do you know who marked those items out on the second page?—A. Yes, Mr. Kaplan.

Q. And that was done at your suggestion, I believe?—A. That is right.

Q. And you have initialed each one of those lines?—A. That is right.

Q. And you also signed and initialed the page, did you not?—A. Those are things I definitely knew were incorrect and agreed to cross them out.

Q. All right, do you know whose writing that is? Is that yours?—A. No, no.

Q. Whosever it was, was it put in at your suggestion, is that right?—A. I don't recall——

Q. It is a long——A. It may be that is right.

Q. Now, then, you also find items on the third page which you have initialed, down to the fourth from the last item

497 that is in this exhibit.—A. That is right.

Q. And you have also signed that page?—A. Yes.

Q. Now, then, do you recall checking that list?

Mr. HORSKY. Which exhibit is that?

Mr. AUSTIN. Plaintiff's Exhibit #6, A, B, and C.

The WITNESS. I recall I signed that.

By Mr. AUSTIN:

Q. Do you recall checking it?—A. Yes.

Q. That is your signature on Plaintiff's Exhibit #7?—A. That is right.

Q. And do you recall checking those items?—A. That is right.

Q. Did you do that more than once, do you recall—checking this sheet?—A. No, I think we did this once.

Q. You did that sheet once.—A. I believe so.

Q. At the time this was prepared and Mr. Kaplan took off the information which is contained there, he was with you, was he not?—A. Right.

Q. And you had the department's mark-up books at
498 that time, did you not?—A. We had the records there at the time I said. I don't think the record is complete. I am quite sure I signed the things, feeling we should have gone into the departments.

Q. At the time you and Mr. Kaplan were making up this list of mark-ups, do you think then that you think that you did not then have all the mark-up books?—A. I think at that time we had the present one. There was an old one there. I said at the time, I recall, we ought to check back some of these things.

Q. Mr. Rose, do you recall signing a statement?—A. Yes.

Q. For Mr. Kaplan?—A. Yes.

Q. Do you know who made up that statement?—A. Offhand, no. I read it. Who actually made the statement up—I read it.

Q. It was written in the Hecht Company, was it not?—A. I said I don't know who made the statement up. I signed it. I read it.

Q. Yes. Did anyone else in the Hecht Company read it?—A. I don't know whether they did or not.

Q. Mr. Etelson?—A. He may have read it.

Q. Who gave the statement to you after it was in the
499 condition it was at the time you signed it?—A. Who gave?

Q. Yes. Did Mr. Kaplan give it to you, or Mr. Etelson, or someone else?—A. The official statement that I signed was put on the table by Mr. Etelson and I signed it.

Q. Was Mr. Kaplan there at the time?—A. Yes.

Q. Do you recall that in that statement you said that you had initialed the exhibits referring to Plaintiff's Exhibit #6, #7, and #8, and others, and that you at that time believed them to be true to the best of your knowledge and belief?—A. To the best of my knowledge.

Q. That is all.

Mr. HORSKY. I have just one or two questions, just for clarification.

The COURT. Yes.

By Mr. HORSKY:

Q. Mr. Rose, you said the boys' department and the students' department were separate. You don't mean they are two departments?—A. No, they are separated in space.

Q. But both are included—A. In department 26.

500 Q. And you have charge over both of these sub-departments?—A. That is right.

Q. I think that is all, Your Honor.

The COURT. You may step down.

Mr. HORSKY. I will call Mr. Rosenberg.

JACK ROSENBERG, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Will you state your name to the reporter?—A. Jack Rosenberg.

Q. Are you employed by the Hecht Company?—A. I am

Q. What is your position?—A. Shoe buyer, ladies' shoe buyer.

Q. What department number is that?—A. 55.

Q. How long have you occupied that position?—A. As buyer?

Q. As buyer.—A. Since 1920.

Q. How long have you worked for the Hecht Company?—A. Thirty-one years.

501 Q. Since 19——A. 1912.

Q. Do you recall an investigation of your department by the Office of Price Administration?—A. Yes, sir.

Q. I hand you, so that you will be able to refer to it, the cost-of-living statement of the department 55, which is Plaintiff's Exhibit 30 with various letters. Is that the cost of living statement for your department?—A. This is department 60.

Q. Excuse me. I hand you Plaintiff's Exhibit #25 with various letters and ask you if that is the cost of living statement for your department?—A. Yes, sir.

Q. Mr. Rosenberg, I hand you Plaintiff's Exhibit #26, A, B, C, and D, entitled, "Merchandise for which Confirmations have been Received and for which Merchandise has been sold by the Store During March and not listed on the Ceiling lists." Can you go through that exhibit and indicate the kind of shoe which is referred to by these various items? Would you wait just a moment so that I can check with you on my copy. All right, Mr. Rosenberg, would you proceed on this exhibit?—A. On the first item, the Best Shoe Company, we did not have this merchandise in March.

Q. I don't care for anything more at the moment; Mr.

502 Rosenberg; just what kind of an item?—A. They were play shoes.

Q. The Desco Shoe Company?—A. They were play shoes.

Q. Frederick-Speier, the first one listed?—A. They were play shoes.

Q. The next Frederick-Speier?—A. Also play shoes.

Q. The next Frederick-Speier?—A. Play shoes.

Q. Fulton Leather?—A. Play shoes.

Q. The next Frederick-Speier?—A. Also play shoes.
Q. The next Frederick Speier?—A. Also play shoes.
Q. And the next one at the bottom on that page?—A. Play shoes.
Q. On the next page, Frederick-Speier?—A. They were play shoes.
Q. Fashion-Footwear?—A. House slippers, bedroom slippers.
Q. Daniel Green Slipper Company?—A. Slippers.
503 Q. House slippers?—A. House slippers.
Q. That is the——A. The same as bedroom slippers.
Q. When you say slippers, you mean house slippers, unless you say something else?—A. When I say slippers, it is house slippers.
Q. Gustin-Guild-Rest, two items?—A. Also slippers.
Q. Daniel Gree?—A. Daniel Green, it should be.
Q. That is slippers?—A. Slippers.
Q. J. J. Grover?—A. They are comfort shoes.
Q. Will you explain what those are?—A. They are not exactly house shoes. They look like house shoes. They can be worn in the street as well, have light weight, comfort shoes with turned soles.
Q. You wouldn't call them slippers?—A. No, sir.
Q. The next Daniel Green?—A. Slippers.
Q. Daniel Green again?—A. Slippers.
504 Q. Gustin-Guild-Rest?—A. Play shoes. Pardon me, sir, they are house slippers.
Q. Take all the time you wish, Mr. Rosenberg.—A. Yes, sir.
Q. Be sure the answers are accurate.—A. Yes, sir
Q. Gustin-Guild-Rest?—A. Slippers.
Q. Daniel Green?—A. Slippers.
Q. Gustin-Guild-Rest again?—A. Those are play shoes.
Q. Huiskamp Bros.?—A. Huiskamp; H-U-I-S-K-A-M-P. They are regular sport oxfords—shoes, I would call them.
Q. Both of those, there are two of them.—A. Both of those are shoes.
Q. The next page, Julian—you pronounce it.—A. Kokenge; they are shoes.
Q. Knight Slipper?—A. House slippers.
Q. Laird Schober?—A. Shoes.
Q. Regular shoes?—A. Regular shoes.
505 Q. Lucille Footwear?—A. Play shoes.
Q. Manoring Gibbs?—A. Manning Gibbs. It should be M-A-N-N-I-N-G; Manning Gibbs.
Q. Those are what?—A. House slippers.
Q. Metropolitan Shoemaker?—A. That is shoes.

Q. Middleton Footwear?—A. That is evening shoes.

Q. Evening shoes?—A. Evening shoes.

Q. D. Myers & Sons?—A. There is another item there under Middleton.

Q. Which one did you refer to?—A. The evening shoe is a Chico, and underneath there is the Votty—it should be Dotty. That is house slippers.

Q. Those are slippers?—A. Confirmation No. 11692.

Q. No, 11691?—A. Also house slippers.

Q. Also slippers. Let's go back up a little bit, Mr.
506 Rosenberg, to Laird Schober.—A. Those are all shoes, Laird Schober shoes.

Q. Yes. D. Myers & Sons?—A. A. D. Myers & Sons, both of those items are play shoes.

Q. Recordia?—A. Play shoes.

Q. And M. J. Saks Shoe Corporation?—A. Regular shoes.

Q. All four?—A. Yes, sir.

Q. Mr. Rosenberg, this Exhibit is introduced as items which did not appear on your ceiling list that you have there Do you find any of them that were actualy listed on that list?—

Mr. AUSTIN. I object to that statement.

Mr. HORSKY. Do you object to the statement or question?

Mr. AUSTIN. I object to the question, which was put in the form of a statement.

Mr. HORSKY. I will withdraw the statement and just ask the question.

By Mr. HORSKY:

Q. Do you find any of these items on your list?—A. If you have the manufacturer's number, could I have it?

Q. Code number?—A. The code number? The first item, the Best Shoe Company is here.

507 Q. Would you show the Court which item it is?—A. It is 1, 2, 3, 4, the fifth one—55–1, the Best Shoe Company.

Q. On which page?—A. On the first page, page number 1. It is five—women's novelty shoes, 55–1, five dollars.

Q. This one has a retail of $3.95, however.—A. Then it wouldn't be on there, because that is play shoes; I don't have play shoes on there.

Q. Then this first one isn't?—A. No, sir; it is not. It is the same manufacturer, but it is not the same item.

Q. Would you explain to the Court, Mr. Rosenberg, how it happened that you did not list play shoes?—A. I did not think it was a cost of living item.

Mr. AUSTIN. No argument over that, if the Court please.

Mr. HORSKY. What?

Mr. AUSTIN. Whether or not they are cost of living items, or whether or not they should be on the cost-of-living statement. That is why I objected to your question, Mr. Horsky, because you put it to him and limited it to the cost of living statement, and that is not the case, you see.

Mr. HORSKY. Do you concede that they should not be on this list?

Mr. AUSTIN. No, I do not concede that, because that is
508 also your base period statement, and they should be on there for that purpose.

By Mr. HORSKY:

Q. For the information of the Court, Mr. Rosenberg, will you read the list of cost of living items listed under footwear in the appendix to the General Maximum Price Regulations?—A. It says, "Street, Work, Dress, and Sport shoes for men, women, and children; infant shoes, rubber footwear."

Q. And your belief was that these did not have to be listed?—A. That is right.

Q. On this statement or on any statement?—A. Any statement.

Q. You understand now that that is wrong?—A. Yes, sir.

Q. And they are now being listed?—A. Yes, sir; everything is being listed now.

Q. Is the same true of house slippers as play shoes?—A. Yes, sir; same thing on house slippers.

Q. You testified, Mr. Rosenberg, that there are a few items on here that are shoes, not play shoes, and not slippers?—A. That is right.

Q. Would you undertake to explain how that would happen, if you can explain why they were not listed?—
509 A. The first one here I will refer to as the last shoes at $10.95. We had shoes in stock at the time at $10.95 when we made out our base period, but we failed to list it, failed to list it on the original at $10.95. We have also had Laird-Schober shoes. All these are marked $10.95. At the time in March we had Laird-Schober shoes at $10.95, but I failed to list it—you recall that original base period.

Q. You just overlooked it, you mean?—A. Yes, sir.

Q. That would be true of the other items which are not play shoes and house slippers?—A. I am referring to this one item here of Laird-Schober shoes, because we have always had them.

Q. I can refer you to the other ones.—A. How we take this item down here, M. J. Saks——

The COURT. We have reached adjournment time, anyhow. Did you find out whether Mr. Brown had taken——

Mr. AUSTIN. We have not received word yet, Your Honor, please, can we hold that till morning?

The COURT. Mr. Clerk, just hold that. That will be all for this evening.

(The Court was adjourned at 4:00 P. M.)

* * * * * *

513 JACK ROSENBERG resumed the stand and further testified as follows:

Direct examination (continued) by Mr. HORSKY:

Q. Mr. Rosenberg, just to get the continuity, you are the buyer in Department 55 of the Hecht Company?—A. Yes, sir.

Q. I hand you Plaintiff's Exhibits 27 and 28 entitled "Rubbers, Arctics, and Rubber Boots on Sale in Store on October 5 Which Were Not Included on the Submitted Price List and Confirmation of Merchandise Received and Sold by the Store," and ask you if you have examined those exhibits.—A. Yes, sir.

Q. Would you point out to the Court the extent to which the items on Exhibit 28 duplicate the items on Exhibit 27?—A. The first number is 398WR, black suede arctics that retails for $3.50.

Q. Would you take them the other way, Mr. Rosen-
514 berg, if you don't mind, take Exhibit 28 and tell us which ones have already appeared.—A. That is what I have, 28.

Q. You have?—A. The first number on top is Style Number WR398. Is that correct?

Q. Let me make sure. Maybe I have my exhibits in the wrong order. That is right. Thank you.—A. Well, the first number would be WR398.

Q. That appears on the other exhibit?—A. That appears on this other sheet, on 27.

Q. All right. The sixth item marked 27 is the same thing. Kedettes.—A. The Kedettes are play shoes made by the U. S. Rubber Company, but they are not arctics or rubbers.

Q. They are play shoes?—A. They are play shoes, Kedettes.

Q. And they don't really fit within the title of this exhibit?—A. They are play shoes.

Q. All right.—A. The next item is——

Q. The next item is black snaps. Do they appear on the other exhibit?—A. I don't see it. They are on here but
515 I don't see the style number on here. I have it on the duplicate here. The snaps are WR631. They are duplicated on here, on the confirmation, No. 60597.

Q. They are the fourth item on Exhibit 27?—A. No; if you take Kedettes as the second item, that would be the third item on 28, or the fourth item on 27.

Q. That is right. Thank you. Is that 27 the next line—— A. That is right; the next line is the quick fastener which is duplicated on the fifth item, duplicated on the fifth item again.

Q. Also the next one is black boots.—A. Black boots at $3.50. It doesn't have the price here. It has black rubber boots, but it doesn't have the price on 27.

Q. Those do appear on both?—A. Do appear, the eight item.

Q. All right. How about the next one, toe rubbers, 95 cents?—A. Toe rubbers are on the top line, the first line.

Q. The next item is black storm.—A. That would be on the third line.

Q. All right. The next item is black, red and brown for $1.25, Transcontinental Rubber Company.—A. Transcontinental is duplicated here. That is the toe rubber, and that is the ninth item.

516 Q. All right. The next item is the Hood Rubber Company, black, high cuban; brown, high cuban:— A. That is on here, $3.50. That is the shoe glove. That is the 11th item.

Q. The next one is black arctic. Is the black spike the same?—A. They are all the same only they are different colors. That is all those three items are the same items exactly, but just different colors or different height heels.

Q. The next one is black arctic at $1.85. Does that appear on the other exhibit?—A. That does not appear. The balance does not appear.

Q. The last one does not appear?—A. No, sir.

Q. Now, will you explain to the Court, Mr. Rosenberg, how it happened that you didn't list rubbers?—A. I didn't understand that they had to be listed.

Q. You didn't understand they had to be listed?—A. No, sir.

Q. You understand they do have to be listed now?—A. I do now.

Q. And you are now listing them?—A. Yes, sir.

Q. Would you look at the last exhibit in your department which I think is Plaintiff's Exhibit 29, and indicate to
517 the Court which of those items are not slippers, if any, or are they all slippers?—A. They are all slippers.

Q. Could you indicate which ones of these slippers appear on Plaintiff's Exhibit No. 26?—A. The second line on top is 70330. 70330 is duplicated on this. I have this Page 2b.

Q. You refer to that as Plaintiff's Exhibit 26, or Exhibit 26;

then you will be able to identify it for the record?—A. 70330 is on Line 11, and it is also——

The COURT. Line 11 of what exhibit?

The WITNESS. What do you call this?

Mr. HORSKY. Plaintiff's Exhibit 26, Page 2.

A. 26, Page 2, Line 11, 70330, and it is also on Line 20.

By Mr. HORSKY:

Q. Also on Line 20 of Plaintiffs Exhibit 26?—A. 26.

Q. I don't find it, Mr. Rosenberg, on Line 20.—A. I have it right here.

Q. It is on Line 20 of the exhibit you are talking about?—A. Of what I have here.

Q. I see. I am sorry. I still don't find it.

Mr. AUSTIN. Here it is.

518 Mr. HORSKY. Oh, I see. Thank you. I have it.

A. The next is the fifth line down, 40216. I have it here as duplicated on Line 8.

By Mr. HORSKY:

Q. The first page?—A. It is Line 8 and Line 19.

Q. All right.—A. The next number is duplicated—the next number that is duplicated is 20246.

Q. That is about——.—A. That is Line 9. That is duplicated on here on Line 9.

Q. That is Line 10 on the exhibit to which you are referring, and it is duplicated on Line 9 of the other.—A. That is right, and it is also on the 17th line. 17 is the same thing.

Q. All right.—A. The next is 20230 which is duplicated here on Line 10, also Line 16.

Q. All right.—A. The next number is 90,000, and I have it here on this sheet as 9,000. Of course, it should be 90,000.

Q. On Plaintiff's Exhibit 26, Page 2, the number 90,000—the number 9,000 is improper, it should be——.—A. It is the seventh line. She has got 9,000 on here, and it should be 90,000.

519 Q. That is the same number that appears a little bit further down again?—A. It is down here on Line 18.

Q. As 90,000?—A. As 90,000.

Q. That item is listed three times. In other words, twice on one exhibit and one on the other?—A. Twice on here and once here.

Q. Yes.—A. The next item is—I don't see any more duplications here on this manufactured by Daniel Green, but I do see duplications here from Custom Built.

Q. Will you point those out?—A. Well, on here you have

3309 from Custom Built, and it should be 3509. 3509 is duplicated here on Line 5.

Q. Yes; I find that. Are there others?—A. There is 3515 right underneath. It is duplicated here on Line 6.

Q. Yes; I find that. Are there others?—A. There are no others.

Q. That is all on this exhibit?—A. Yes.

Q. Now, will you look at Plaintiff's Exhibit 26, which is the large exhibit to which you were comparing this one?—A. Is this it right here?

520 Q. Yes. Could you point out to the Court the extent to which they are duplicated inside of this exhibit itself, as to what other—what extent duplications occur in that exhibit apart from the ones that you have mentioned?—A. Well, on this same exhibit here?

Q. Yes.—A. Well, Line 3 on top here, that is 20246, and it is duplicated on the same sheet on Line 9 and Line 17.

Q. That is three times on this sheet?—A. That is three times on this sheet.

Q. And it was also on the other exhibit, was it not?—A. It was also on the other sheet.

Q. All right.—A. And 40216 is also duplicated. That is Line 4 and it is Line 8.

Q. All right.—A. And it is Line 19.

Q. That is three times on this exhibit?—A. Three times on this one sheet.

Q. It was on the other one too, was it not?—A. It is on the other one.

Q. And Style Number 20230 is on Line 10 here, and it is on Line 16?—A. Yes.

521 Q. That was on the other one also?—A. Yes; and 90000 is Line 7 and Line 18.

Q. Yes.—A. And 70330 is Line 11 and Line 20. That is about all.

Q. Those are all that you find on that Exhibit?—A. That is right.

Mr. HORSKY. No further questions, Your Honor.

Cross-examination by Mr. AUSTIN:

Q. Mr. Rosenberg, will you look again at those three large sheets you just had.—A. Yes, sir.

Q. Which are identified as Plaintiff's Exhibit 26 a, b, c, and d. I believe there are four sheets.—A. I think I have them here, sir.

Q. That is your signature, is it not?—A. Yes, sir.

Q. Those are your initials there in the right-hand corner?—A. Yes, sir.

Q. And your initials and signature appear on each one of those sheets, do they not?—A. Yes, sir.

Q. And you also signed Plaintiff's Exhibit 27, did you not? That is one of those other yellow sheets.—A. Yes, sir.

522

Q. And likewise Plaintiff's Exhibit 28?—A. Yes, sir.

Q. Do you recall, Mr. Rosenberg, signing a statement?—A. Yes, sir.

Q. In connection with this investigation?—A. Yes, sir; I signed a statement.

Q. And do you recall in that statement that you referred to the exhibit which now has been identified as Plaintiff's Exhibit 26 a, b, c, and d as being a schedule of those items which do not appear on any submitted ceiling list?—A. Yes, sir.

Q. And further to the effect that you checked these items with the investigator of the Office of Price Administration?

Mr. HORSKY. Your Honor, may I show the witness a copy of his statement so he can see what he did sign.

A. You say that I said I checked every one of these items with the investigator?

By Mr. AUSTIN:

Q. I say that you said in your statement—you said that you checked the merchandise with an OPA investigator.—A. I think I checked a lot of merchandise with the OPA investigator.

Q. Yes.—A. Of course, a lot of merchandise I could not have checked with the investigator, especially play shoes, because they were all sold out at that time of the year.

523

Q. And that you did not record the shoes which appears on the confirmations, on this Exhibit 26, through an oversight. Didn't you say that?—A. I said I didn't understand that I was supposed to do it. I didn't understand the order.

Q. Will you look at the statement and see if you don't see there that the reason you didn't do it was because of an oversight. That is in connection with what referred to in your statement as Exhibit B, Mr. Rosenberg.—A. I am trying to find it.

Q. All right.—A. It is there, all right. It says through an oversight.

Q. That is your statement, isn't it?—A. I mean the same thing. I did not understand the ruling at the time.

Q. And likewise your reason for not submitting the rubbers, arctics, and slippers on these—on your list—was because you didn't understand they should be there?—A. Yes, sir. I didn't understand that they were a cost-of-living item.

Q. Well, did you understand this list that you made out to be only cost-of-living items?—A. The original; yes, sir;
524 the original list that I made out, base period; yes, sir.

Q. Well, now, you say base period and you say cost of living.—A. I guess that is what you call it. It was taken off the base period.

Q. Well, is that the only list you made up?—A. At that time. I have made up lists since then.

Q. Did you know at that time that you were supposed to make up a base-period list and a cost-of-living commodity list?—A. I was told to make out some kind of a list, but I didn't understand that I was supposed to include arctics, house slippers and play slippers in there.

Q. Didn't you know that you were supposed to make a list of every commodity?—A. No, sir; I did not.

Q. Now, these Kedette shoes, Mr. Rosenberg; did you have those in March.

Mr. HORSKY. Which shoes are you referring to, Mr. Austin? I want to follow you.

Mr. AUSTIN. The ones he has as Kedettes.

The WITNESS. Kedettes.

Mr. HORSKY. On which exhibit?

Mr. AUSTIN. I don't know that it is on any. Yes; he has them listed on Exhibit 28.

525 By Mr. AUSTIN:

Q. Did you have those shoes in March?—A. Well, you have the receiving date here. You have it here as April 9 so I couldn't have it in March.

Q. How did you determine the selling price of those shoes?—A. Which shoes?

Mr. HORSKY. Your Honor, may I make this statement? I believe Mr. Austin is going beyond the scope of the direct examination. I have no desire to restrict him at all, but I wish to point it out; he is now, I assume, attempting to point out that the price was improperly fixed, which he did not attempt to do on his original examination. I have no desire to limit the Office of Price Administration in anything they wish to bring out, but I wish to call it to Your Honor's attention.

The COURT. You may answer.

A. I didn't understand your question.

(Last question read by the reporter.)

A. Which shoes?

By Mr. AUSTIN:

Q. The Kedettes.—A. Play shoes?

Q. Whatever they are.—A. These Kedettes here. Well, it

happens to be an advertised item that was sold for one price everywhere in the city, all over the country. I had them
526 before, had them last year too and the year before, had them for five or six years.

Q. You don't know whether you had them in March or not?—A. I couldn't give you that information. I don't remember. I wouldn't want to guess.

Q. At least you didn't have them on your ceiling price list?—A. I didn't have them on my ceiling price list, no, sir. I admit that.

Q. And you don't know whether you made out a base period price list or not?—A. I don't think I made it out. It would appear on the base period if I made it out.

Q. And when you got these in on the 9th of April did you make out any record showing how you determined the price at which you sold those shoes?—A. No; I did not.

Q. But you originally established the price at $2.69, I believe, is that right?—A. On one style if that is what you are talking about.

Q. Yes.—A. That is right.

Q. And then in June you marked that up?—A. That is right.

527 Q. Those shoes from $2.69 to $2.95, did you not?—A. That is right.

Q. And the reason you did that was because the U. S. Rubber Company, the supplier, advised you that your price was not in line with other competitors, is that right?—A. That is right.

Q. And then I believe your experience with those shoes at that marked-up price was not very good, was it?—A. They didn't sell.

Q. So later you marked them down to $1.39?—A. That is right, and also we didn't sell a pair at the higher price.

Q. But you did have them offered for sale all that time, did you not?—A. We did; yes, sir.

Q. Mr. Rosenberg, do you recall—strike that. Have you been here during the examination of Mr. Etelson and Mr. Levi?—A. Part of the time; yes, sir.

Q. Part of the time?—A. Part of the time.

Q. Did you hear Mr. Levi and Mr. Etelson testify with respect to the various bulletins that were issued in the Price Control Office?—A. Yes, sir.

Q. And did you receive those bulletins?—A. I am sure
528 I received some of them. I am pretty sure I did. We get a lot of bulletins.

Q. Do you recall ever reading any of them?—A. Yes; I think I did.

Q. But you were never advised—at least it was never explained to you and you never understood that there was a difference between the base period statement and the cost-of-living commodity statement?—A. That might have been told to us at meetings. We had quite a number of meetings at the very beginning. Mr. Levi spoke to us. I am sure he did.

Q. Well, did you understand it then?—A. I didn't understand it.

Q. You didn't understand it?—A. No.

Q. Do you understand now that there is a difference?—A. Yes, sir.

Q. Were you advised, Mr. Rosenberg, what items that you sold in your department were cost-of-living commodity items?—A. Not personally we weren't. We were told in the group. I mean no one came down and told me that this should be taken and this should be taken. We had lots of group meetings and our regular buyer meetings.

Q. But throughout, by reason of those meetings, you didn't seem to find out about what items should be and what
529 items should not?—A. I didn't get the information. It would be just as easy for me to write it down as I did all the others, all the other information. I just didn't understand it, and that is the truth.

Q. Did you think then that you didn't understand it?—A. I thought I understood it, but it came out later that I didn't. I didn't understand it at all. I didn't understand I was supposed to take house slippers or play shoes and arctics as a cost-of-living commodity. I am not sure now about the house slippers.

Q. Have you ever seen the General Maximum Price Regulation, Mr. Rosenberg?—A. Yes; I saw it.

Q. Do you recall seeing what is designated therein as Appendix B, which lists the cost-of-living commodities?—A. I didn't read the whole book all the way through. I read part of it, but I didn't read it all through, and I couldn't get it. I understand it now, but I certainly didn't understand it at the time.

Q. Do you recall ever seeing those pages?—A. No, sir; I didn't.

Q. Now, you see there what that is, do you not?—A. I do.

The COURT. What is he looking at?

Mr. AUSTIN. He is looking at the General Maximum
530 Price Regulation.

The COURT. Yes. All right.

By Mr. AUSTIN:

Q. Now, referring to the right hand page there under the heading Footwear, those four lines there, the meaning of those is perfectly clear, isn't it?—A. Yes, sir. I didn't see that.

Q. Now, then, Mr. Rosenberg, referring again to Plaintiff's Exhibit 26a, b, c, and d, that is that exhibit of four sheets—— A. Yes, sir.

Q. I believe you checked these items were Mrs. Snelling, did you not?—A. No; I did not.

Q. Of the OPA.—A. You mean from this list or from the stock?

Q. When this list was made up.—A. No; I did not?

Q. You did not?—A. No; I didn't check this list with Mrs. Snelling.

Q. Well, did you go through your stock with Mrs. Snelling to get the information?—A. I gave Mrs. Snelling the information she asked for, but I didn't give her this information because most of this merchandise we didn't have at the time.

531 In fact, the last item here we had never even received. This information was copied from confirmations.

Q. Well, now, just a minute. This merchandise which—this is merchandise which was sold in March, was it not?—A. No, sir.

Q. It was not?—A. No, sir.

Q. You are positive about that?—A. Some of this might have come in in March, but a good bit of it wasn't even in here in March.

Q. You weren't selling this same merchandise in March, is that right?—A. No. Some of it we had. I mean if it came in in March, we sold it in March, but all of this merchandise didn't come in in March.

Q. Well, now, I am not referring to this particular confirmation.—A. Well, which confirmation are you referring to?

Q. I am referring—well, now, did you sell, for instance, Best Shoe, Style No. 1297?—A. Not in March.

Q. In March?—A. No; they didn't come in until April.

Q. In other words, you didn't sell that shoe at all in

532 March?—A. No, we didn't get it in.

Q. That is right. I understand that you didn't get it in on this confirmation.—A. We didn't have any of this merchandise.

Q. I am talking about any of this merchandise?—A. In fact, we never bought merchandise from those companies before this year, and before we received our first lot it was April, the last part of April.

Q. Fine. All right. Now, referring to Exhibit 27——A. Yes, sir.

Q. Or—no, I beg your pardon, the last page, 26d.—A. 26d; yes, sir.

Q. It has four items on that page. Were they in the store in March?—A. The last four items? Not, not the last four.

Q. Were the last three?—A. I think the last three were in.

Q. Do you recall, Mr. Rosenberg, assisting Mrs. Snelling to get the information that appeared on these sheets?—A. No, sir.

Q. Or do you recall checking this with Mr. Kaplan?—A. Checking all these with Mr. Kaplan? No, I don't recall.

Q. Do you recall checking any of them with him?—A. I think we went over some list.

533 Q. But you don't know whether it was this list or not?—A. No.

Q. Well, now, did you go over this list before you signed it?—A. I don't remember going through this whole list. I signed it because Mr. Etelson told me to sign it. I was told to appear in his office one morning to sign this copy. Mr. Kaplan came in, and I signed it.

Q. You hadn't seen it?—A. I had no chance to check every one of these items at all.

Q. Now, Mr. Rosenberg, are you familiar with the Hecht Company's OPA Form No. 7?—A. Yes, sir.

Q. And had you filled those out and turned them in prior to October 1?—A. I might have turned them in.

Q. New merchandise?—A. No, sir.

Q. You did not?—A. Not for every item; I did not.

Mr. AUSTIN. That is all, I believe.

Redirect examination by Mr. HORSKY:

Q. Mr. Rosenberg, would you refer again to the fourth
534 page of that exhibit which you are holding which I believe is Plaintiff's Exhibit 26. The last item on that page, the last two items, are U. S. Shoe Company shoes. What are the popular names for those shoes?—A. Red Cross shoes.

Q. Will you refer to Plaintiff's Exhibit 25, which is your submitted list, and tell the Court whether those items are listed on that as Red Cross shoes, and point out where?—A. Here.

Mr. HORSKY. Here is a duplicate copy, Your Honor. It will be a little bit easier to see.

The COURT. That is all right. Right here (indicating).

By Mr. HORSKY:

Q. Those shoes are—are, in fact, listed on the ceiling price?—A. Those two items are listed.

Q. So the record will be perfectly clear, Mr. Rosenberg, did you sell any of these Kedettes at the higher prices at all?—A. Not a pair.

Mr. HORSKY. That is all, Your Honor.

Mr. AUSTIN. That is all, I believe.
(Witness excused.)

535 JEAN ROTHENBERG, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Will you state your name to the reporter?—A. Jean Rothenberg.

Q. What is your present address?—A. My present home address?

Q. Yes.—A. 2032 Belmont Road.

Q. Washington, D. C.—A. That is right

Q. Are you employed by the Hecht Company?—A. Yes; I have been employed by the Hecht Company since June 1933 as buyer of the hosiery department.

Q. You have been buyer of the hosiery department?—A. Department 47.

Q. Miss Rothenberg, plaintiff has introduced in evidence as Plaintiff's Exhibit 39 and Plaintiff's Exhibit 40 items, exhibits, entitled "Merchandise in Stock and Articles for Sale in the Store on October 8, which was not on the Ceiling Price List Submitted to the OPA as Required under the General Maximum Regulation, and Items for which there are Confirmations between January 1 and March 1 which are not on the
536 Ceiling Price List." Would you explain to the Court how you prepared your original listing of items at the time that the General Maximum Price Regulation came out?—A. Yes. I went through my pink confirmations in the office.

Q. In your office?—A. That is right in my office, and after going through those I realized that some of them were missing and I couldn't locate them. Then I went to the department, and to the best of my ability I listed all merchandise that I thought should be listed on the ceiling price list.

Q. When you say what you thought should be listed, will you explain to the Court in a little more detail what your interpretation of what the listing should be was at that time?—A. Merchandise that was in stock and had been received up to March.

Q. Now, in the women's hosiery department are there items which are perhaps from differeht manufacturers? Are there very much the same items?—A. Yes. Almost everything is similar in the hosiery department.

Q. Did you list each item or did you you interpret it as being listed in a group?—A. I went through manufacturers and tried to list each item. I probably omitted some, or
537 perhaps some of them had already been sold and out of stock, and naturally I wouldn't have listed those.

Q. That is they didn't—your pink copies of confirmation didn't show them?—A. I did not list them; no.

Q. Since that time, Miss Rothenberg, you are familiar with the store OPA No. 7 form?—A. Yes, I am familiar with it.

Q. What was your understanding of the manner in which that form was to be used?—A. Well——

Q. Let me finish the question before you start to answer.—A. I am sorry.

Q. What was you understanding of the use to which that form was to be put before—at the time before the investigation?—A. I understood that if the article was the same service and same price line, that you did not have to list it.

Q. That you didn't have to make out an OPA form for it, is that right?—A. We had little green stickers on the green confirmations, and I did check those if they were on the basic price list inasmuch as I had the same type of stocking and in the same price range.

Q. Even though it might have been from a different
538 resource?—A. That is right.

Q. You understand that is not correct?—A. No; now we make up an OPA 7 for everything that comes in that isn't already on our basic price list.

Q. Even though an ordinary person couldn't distinguish the article?—A. Just from another manufacturer or another number. If it is the same type of stocking or the price range we make out an OPA 7.

Q. Now, Miss Rothenberg, will you take this—I hand you, Miss Rothenberg, Plaintiff's Exhibit 41, which is entitled "Mark-ups in Department 47." Have you made an examination of that exhibit?—A. Yes; I have.

Q. Would you take the first item——A. The first item?

Q. On that exhibit. There are two of them apparently. Well, take them together, both of them marked 345 RT, Silk Stockings, from $1.00, three for $2.90, to $1.15 or three for $3.30, marked up on April 6. Will you explain what you discovered with respect to that, whether that higher price is a high—I mean whether that higher price is a proper price?—A. The higher price stocking at $1.15 came in in March, and they were marked on March 27 and sold in our stock there, but the stockings that we had at $1.00, I marked them
539 up to $1.15 to go with the same price.

(Last answer read by the reporter.)

Mr. AUSTIN. That was on April 6?

The WITNESS. That is right, but the ceiling of the same stocking was $1.15.

By Mr. HORSKY:

Q. Will you pick out of these documents, Miss Rothenberg, the documents which will show that you sold this stocking, or that you marked that stocking at that price in March?—A. This is the confirmation.

Q. This is the invoice?—A. That is right.

Q. And what does this show?—A. It shows the stocking was marked at——

The COURT. You will have to keep your voice up.

A. I am sorry. Here the stocking was marked $1.15, and here it shows the date it was marked, on the 27th of March.

Q. That is the stocking which is referred to in this exhibit as the first two lines?—A. That is right.

Mr. HORSKY. I offer this in evidence, Your Honor, as Defendant's Exhibit GGG.

(The document was marked "Defendant's Exhibit GGG" and received in evidence:)

540 Q. The next item on this sheet, Miss Rothenberg, is Apex 41 Style K stocking marked from—marked $1.35 or three for $3.95 to $1.50 or three for $4.55 on April 31. Did you make an investigation of that?—A. Yes; I did.

Q. Mr. Etelson helped you with those investigations, isn't that right?—A. Yes.

Q. Will you explain what you discovered with respect to that item?—A. The stocking was marked in our stock room in March at $1.35, and I marked the stocking up to $1.50 to go with a similar stocking in stock which was our highest price in March.

Q. Did you sell this particular stocking in March?—A. Yes; we did.

Q. So this one was an item which you marked up even though you had a marked ceiling price for it?—A. I did.

Q. You understand that isn't a proper marking?—A. I understand.

Q. You did not at the time?—A. I did not at the time.

Q. Will you explain what you understood at the time?—A. I understood if we had a stocking in stock at a

541 ceiling price that was similar—or, in fact, the stocking that I compared it with was not quite as good at $1.50, that you could mark the stocking up to comply with the ceiling price of March.

Q. Even though you had sold this stocking in March?—A. That is right.

Q. You understand that is not correct?—A. Yes, and we marked that stocking back to $1.35 later on.

Q. The next item, Miss Rothenberg, is an item listed here as 805 Style K, marked three for $4.80 to three for $5.75 from $1.65 to $1.95. Did you ever investigate that item?—A. Yes, I did.

Q. Would you tell the Court what you found about that one?—A. That stocking came in in February, February 25, and we retained them at $1.65. Later we marked 91 pair up. I think it was in April or in May.

Q. The mark-up is dated April 25.—A. In April we marked the stocking up $1.95 for the same reason that we marked the other stocking up, but we sold that stocking. I don't think we had any of those left at the time of the investigation at all.

Q. Did you have any of them left on May 18?—A. I don't think so. In fact I am sure we didn't because there was—
542 this was a silk stocking that was very desirable, and we probably sold them all out.

Q. That is the 91 pair you marked up would have been gone by May 18?—A. That is right; yes.

Q. Is that 805 the correct number?—A. Yes. I think it is 805 or 905. It is an extra size silk stocking that comes from Berkshire.

Q. The next two items, I take it, or the next three items, as a matter of fact, are probably similar.

Mr. AUSTIN. Just a minute, if Your Honor please.

Mr. HORSKY. Can you strike that, please.

By Mr. HORSKY:

Q. The next item is C44, silk, marked from $1.25 to $1.65, and the one following CC44 silk marked from $1.25 to $1.65 on the same day. Did you investigate those?—A. Yes; I did.

Q. Is the explanation the same for both of those?—A. Well, there is a third one of the same number.

Q. Answer the question. In the explanation the same for both of those?—A. Yes, sir.

Q. Is the explanation the same for the next one too?—A. No. You skip a few, and then the other line here you have 444 again. He marked them up from $1.25 to $1.50.
543 Q. I am just trying to get the explanation, Miss Rothenberg, as simply as possible. Can you explain those three items, or would you prefer to take them separately?—A. Explain them separately?

Q. Would you prefer to explain them separately?—A. It doesn't make any difference.

Q. Take them separately. What is the explanation for Item C444 silk marked up from $1.25 to $1.65 on April 25, which is the fifth item? Can you tell the Court what you discovered

about that item?—A. In February or March we bought 50 dozen of this stocking. We bought 50 dozen of this stocking and marked them $1.25. Later in April, I think, I bought 200 dozen of the similar stocking and marked them $1.65 as the price at that time. That was the price of the stocking. When the questioning came out about the price ceiling I realized that we had the similar stocking at two prices, so I took all the stockings and marked them down to $1.50 to go with the stocking we had in stock at that time that wasn't quite as good. I thought that would sort of equalize it, and I marked it down to $1.50.

Q. Is this the item about which you asked Mr. Levi with respect to what you should do?—A. Yes.

Q. What did you understand he told you?—A. It was
544 my interpretation that that is what he told me to do. I might have interpreted him wrong.

Q. To mark them down?—A. To $1.50.

Q. Even though the highest pair——A. The others I marked, 200 dozen, from $1.65 to $1.50, and marked about four dozen from $1.50—from $1.25 to $1.65, and then marked them all back to $1.50, and they were sold at $1.50 a pair.

Q. How did you get those instructions from Mr. Levi?—A. Well——

Q. Were they given to you directly by him?—A. No, I discussed it with Mr. Wiseman.

Q. Who is Mr. Wiseman?—A. He is my merchandise manager.

Q. And he informed you what Mr. Levi had said to do?—A. That is right.

Q. Now, the next item on this exhibit, Miss Rothenberg, is also C444, silk stocking, $1.25 to $1.65 on April 25. Is that the same?—A. That is the same thing. That is exactly the same thing.

Q. The next item is C444 silk stocking from $1.25 to $1.50 on May 13. Is that the stocking?—A. Yes. We still found a few at $1.25 in stock that hadn't been marked up to $1.65, so we marked them to $1.50.

545 Q. Now, the next item, Miss Rothenberg, is B327 hose, 69 cents to 79 cents. Did you investigate that item?—A. Well, we investigated that, and I could not find the confirmation, but on our basic ceiling list I have rayon stockings at 79 cents, and we did have some for sale at 69, and I probably marked that up to go with our basic price at 79 cents, because that is the price that we carry. That is 79 cents, the lowest price we carry except when we have a sale.

Q. Do you know what this stocking is?—A. No, I don't. I just could not find it. We searched all around.

Q. So you don't know really whether this stocking which is referred to here in this mark-up sold at 69 cents in March or 79 cents in March?—A. I could not be sure; no.

Q. The next item, Miss Rothenberg, is Manufacturer's No. 345 marked up from $1.15 to $1.35 on August 5, 1942. Did you investigate that item?—A. Yes, I did, and that stocking come in from Berkshire marked $1.15, and we had a stocking in stock at $1.35 that was the same type of stocking, and I marked the Berkshire stocking up to $1.35 to equalize the price. We have both stockings at the same price.

Q. This was, in other words, an improper marking?—A. I would say so now.

546 Q. Is this the same stocking that was marked up in the first two items on this exhibit from $1.00 to $1.15?—A. It is the same type stocking but not the exact same number. It is a different gauge. Of course, if you looked at them you could——

Q. They are both described——A. They are both silk stockings with rayon stops and they both come from Berkshire. One is a little finer stocking.

Q. The next item, Miss Rothenberg, is a silk stocking marked up from 77 cents to $1.35 on August 24. Would you explain that item?—A. Well, you have about seven items there, and I'd like to explain the whole thing together.

Q. Which ones are you going to refer to now?—A. The 77 and the 88 that were marked up to $1.35. Is that what you want?

Q. The other ones. You said seven. How many do you want to explain?—A. I will explain the ones that were marked from 77 to $1.35, and then I can explain the 77 that were marked up to $1.15. The explanation is the same.

Q. All right. Will you tell the Court what it is?—A. On August—in August 1941 we bought from a manufacturer over 1,000 dozen stockings, and marked them $1.15 and $1.35. The

547 925 and 935 were marked $1.35, which appear on our basic ceiling, and 939 and 949 were marked $1.15. During that fall and spring we had quite a few promotions in our department, and we marked these stockings to 77 cents and 88 cents at the different times when we had these sales.

Q. Would you specify exactly when the sales were? That is, did they occur in March?—A. No, no. This was before March.

Q. This was before March?—A. They might have had a sale in March, but I know specifically that the stockings sold in March at $1.15 and $1.35. As I said, we bought over 1,000 dozen of these particular type stockings. We had our anniversary. We had different type sales during that time. In

August we had about 500 pair left, and we decided that we weren't going to have any more sales and there wouldn't be any use having these stockings at 77 and 88, so we took those stockings and marked them into our regular price line. We still had them here at $1.15 and $1.35, and we put them in our stock and sold them at that price. I think 500 pairs were marked up.

548 Q. Miss Rothenberg, are these items—these invoices the ones on which you ordered the stockings?—A. That is right.

Q. They are dated August and September 1941.—A. They were bought in August. Some of them might have come in September and some a little later.

Q. What do these indicate as to the original price at which these were to be sold?—A. One pair for $1.15 and three for $3.35, and one pair for $1.35 and three for $3.95.

Q. You will have to speak to the Court.—A. There were a few marked at $.95; when the sale came we sold them at $.77 and $.88.

Mr. HORSKY. I offer these in evidence, Your Honor. Give them one number.

The CLERK. HHH.

(The documents were marked "Defendant's Exhibit HHH" for identification and were received in evidence.)

Mr. JAMES. Are those invoices?

Mr. HORSKY. That is right.

Mr. AUSTIN. May I ask, do you have these mark-downs? She testified they were marked down to $.77 and $.88, and then marked up. The dates of these mark-ups and mark-

549 downs, I think, are very, very important.

By Mr. HORSKY:

Q. Do you have those dates? Will you see if you can find in those reductions the ones which you marked from $1.15 and $1.35 down to $.77 and $.88?—A. Yes. They are all listed on these sheets here.

Q. You can refer to these, if you wish.—A. Mr. Etelson and I worked on them.

Q. Do you find them, Miss Rothenberg?—A. No. I know they are here because we had them all.

Q. Just take your time and find them.—A. Just wait. This is one. Here is another. Well here, when it says $1.13, that means $1.15 inasmuch as they are three pairs for $1.35. They are one unit.

Q. Just pick them out and you can explain it later.—A. Yes. Here.

Q. Pick them out.

Miss Rothenberg, when you brought these in, you say, you brought them in at $1.15 and $1.35, is that correct?—A. Yes, sir.

Q. Now how did you arrange it when you were going to make a sale? Did you mark all of these stockings down or just part?—A. Just part.

550 Q. Will you explain how you arrange your stock when you have a sale?—A. Well, we decide to have a sale and we figure out about how much business we would do on that particular sale. If it is a one-day sale we might take 50 dozen and mark them down at a price, and when the sale is over we will mark them back.

Q. You don't, in other words, mark the whole thousand dozen down?—A. Oh, no. There would be no reason to do so because the merchandise was bought, as I told you, to sell for $1.15 and $1.35, but inasmuch as we could not get merchandise to sell at those prices, we took merchandise from stock and marked it down for these special occasions.

Q. Now, Miss Rothenberg, I show you reduction sheet No. 120-46, and ask you if that is one of the items you marked down?—A. That is right.

Q. And 120-45?—A. Yes.

Q. All of the items?—A. It is 90 something cents. That is another stocking.

Q. The first two items?—A. That is right.

551 Q. 120-43?—A. Yes.

Q. 120-42—all of the items on that sheet?—A. Yes, sir.

Q. 120-40?—A. Yes.

Q. Both items?—A. Yes.

Q. Mark reduction No. 71-8. There are 1, 2, 3, 4, 5—6 items. Which one does not apply?—A. The last one does not—the $1.19 does not.

Q. The first five do?—A. That is right.

Q. On this sheet—does that refer to this item?—A. Yes.

Q. Sheet No. 71-14. Does that apply to this item?—A. Yes.

Q. Sheet 71-15?—A. No, I do not think that would.

Q. That one does not?—A. No.

Q. 71-16?—A. Yes, that would.

552 Q. 71-17?—A. Yes, that would.

Q. Sheet 71-18?—A. Yes.

Q. Sheet 71-19?—A. Yes.

Q. Now would you indicate the dates of these various sheets which you have said do apply to this?—A. The dates of the mark-downs?

Q. Yes.—A. Well, the dates are right here.

Q. Will you show the Court what you are referring to?—A. Right here. This was marked down November 12th.

Q. That is No. 120-46?—A. Yes. This was on the 11th.

Q. That is 120-45?—A. This was October 31st.

Q. 120-43.—A. 27th.

Q. 120-42.—A. This was the 10th.

Q. Of October?—A. Yes, sir.

Q. 1941?—A. That is right.

Q. That is 120-40.

553 This one is 71-2. Did you say that applied to these items?—A. Not the $1.08; the $.88.

Q. The last few items on that page do?—A. That is right.

Q. And the date of that is?—A. The 1st of September.

Q. 1941. That is 71-2. The 71-3 is dated what?—A. September 10th. That would be 1941. That is the 11th.

Q. Don't answer till I ask you.—A. I am sorry.

Q. 71-8.—A. That is January 6, 1942.

Q. 71-9.—A. That is on January. The date is not there.

Q. 71-14.—A. January 21, 1942.

Q. 71-15.—A. February 11, 1942.

Q. 71-16.—A. February 18, 1942.

Q. 71-17.—A. March 4th.

554 Q. 71-18.—A. March 11th.

Q. 71-19 is March 19th?—A. Yes, sir.

Q. Is that the last one in this group that you find applies to it?—A. Yes, sir.

Q. Would these sheets indicate that mark-downs ceased about the middle of March?—A. That is right.

Q. And you have testified, did you not, that the stocking was sold in March?—A. Positively. I had them at $1.15 and $1.35.

Mr. Horsky. I offer these in evidence, Your Honor, as defendant's exhibit III. Will you give them to Mr. Austin?

(The documents were marked "Defendant's Exhibit III" for identification and were received in evidence.)

The Court. We will suspend for a five minute recess. (A five minutes recess was had.)

The Court. All right, Mr. Horsky.

Mr. Horsky. Thank you, Your Honor.

By Mr. Horsky:

Q. Will you clarify for me the manner in which you treated this large group of stockings which you received, you say, in August 1941. When you had a promotional sale, how

555 many did you mark down?—A. That all depended on the event. Sometimes we wanted 50 dozen. Sometimes if there were some left——

Q. (Interposing.) How many did you mark? What was the basis upon which you judged how many to mark down?—A. Dependent on the volume of busines we expected to do that day.

Q. After the sale was over, sometimes you sold them all and sometimes you did not, is that correct?—A. That is right.

Q. Suppose you did not sell them all. What do you do with the rest?—A. I put them in my stock room with the idea that we would have another sale in which I would use the same type of merchandise.

Q. These were marked on the stockings?—A. We had to. Sometimes we take a ticket off and sometimes we just stamp the new price on the stocking and left the original price there. The stocking has to be handled—sent up to the marking room and then back to the floor.

Q. Is that the reason you did not change the price up again after the sale?—A. No. That was one of the reasons,
556 because it does not do a silk stocking very much good to handle it, and then we have a promotion plan for a month or several months, and we had planned to have that stocking again on sale, and we took what we had left and put them in our stock room.

Q. These stockings which you marked up on August 24, 1942, were the stockings you had left which you referred to?—A. Yes.

Q. I see.—Now let us go to the next item on this sheet of mark-ups, Miss Rothenberg. It is described as a mark-up taken on August 24, 1942, of a cotton stocking from $1.35 to $1.50. Did you investigate that one?—A. Yes. I investigated that, and found that it was 10 pair of cotton stockings. Now we had a cotton stocking in stock at $1.35. The 10 pair might have been in replacements that were returned from a customer with the wrong price, or they originally might have been marked wrong, and that was the reason for the mark-up. I could not find a particular number of stockings, but it was just 10 pair and they probably were either marked wrong in the marking room, or somehow wrong tickets got on these, and we took a mark-up to go with the $1.50 stocking. They were the same type of stocking, I presume.

557 Q. You have several kinds of cotton stockings, don't you?—A. Yes; but I wouldn't take 10 pairs of stockings and mark them up unless they were the same stocking that we had in stock at $1.50 a pair.

Q. Well, do I understand you to say that you do know what kind of stockings these were?—A. No; I don't. I know they were $1.35, and we marked them up to $1.50, but it must have

been because it was either marked wrong in the marking room or got a wrong ticket on it, because there were only 10 pairs, and there would be no reason to mark 10 stockings up for any other reason—just to have them go into the same type of stocking you have.

Q. We might conclude that the particular stocking that is referred to in this mark-up was sold at $1.35 or $1.50, is that right?—A. No; I couldn't be sure.

Q. That is all. The next item, rayon stocking, marked up from $1.15 to $1.35, and the following, $1.15 to $1.35 on September—October 1st. Did you investigate that one?—A. Yes.

Q. And those are both the same?—A. Yes; they are both exactly the same.

558 Q. Will you explain to the Court what that was—the mark-up?—A. When a stocking was bought and I made a confirmation in error, I marked the retail out at $1.15 instead of $1.35.

Q. Do you have the confirmation here?—A. I don't have it here; no. It is Cannon hosiery.

Mr. AUSTIN. I think we can agree, Mr. Horsky, that that is what Miss Rothenberg did.

Mr. HORSKY. All right.

By Mr. HORSKY:

Q. Will you just continue with your explanation then, Miss Rothenberg.—A. When the stockings came back into stock I took them off the floor and sent them to the marking room to be marked up through for $1.35. The stocking compares with a stocking that we have in stock at $1.35, which is on my price-list. This stocking did not come in in March.

Q. You did not have this particular stocking in March?—A. No, sir.

Q. Miss Rothenberg, some question has been raised with respect to the posting of prices in your stocking department. I hand you a picture and ask you if that approximately represents the lay-out of the various places where you

559 sell stockings——A. That is right.

Q. (continuing.) In the Hecht Company?—A. Yes.

Q. Now will you indicate to the Court where the prices are posted on stockings, so far as you can identify them from this.—A. You mean where they were posted? We have a different system today. We have the postings and frames all around the department, but I think at the time of the investigation our department was split in three parts. There is the—there is a round section that we had two posters—one was silk hosiery—at the time I think we had silk stockings—and the other side, postings on lisle stockings and socks.

Q. Will you indicate on this exhibit and show the Court where the posters were at the time of the investigation. You might make a little "x" on this sheet.—A. One here and one here and two there.

Q. Will you make X's so it will be indicated on the exhibit.—A. Here and here.

Q. Mark these places. Are these posts?—A. Yes; they are.

Q. Which side of the post was it on?—A. On either side of the post.

560 Q. One on each side of the post?—A. Yes.

Q. Will you indicate on the exhibit what should have been there.

Mr. AUSTIN. I object to that, Your Honor. "What was there" instead of "what should have been there."

Q. What was there. Was there a sign on each side of this post?—A. Yes.

Q. Will you put an X where each sign was.—A. These are the posts. I am not quite certain of this.

Q. You know your department. Can you recognize that as the department?—A. Yes; I recognize this, but I cannot recognize where the posts should be. Are these the posts?

Q. Those circles you are pointing to?—A. No; no; these here.

Q. How many posts are there in this section?—A. Two; one on either side.

Q. Well, these circles represent the posts, is that correct?—A. Yes.

Q. Now will you indicate specifically on that chart

561 with a pencil exactly where the signs were at the time of the investigation?—A. I wasn't there the day of the investigation.

Q. I don't mean the exact moment.

Mr. AUSTIN. I object, if the Court please. She wasn't there and cannot testify.

Q. You had been there during that period?—A. Yes.

Q. And you knew where the signs were?—A. That is right.

Q. Take a pencil and indicate on that so the Government counsel can see after you are finished.—A. There is one here and one here and two here—right here; none on this side at all.

Q. When you say that there was one on this post and one on this post, do you mean that there was just one sign?—A. Two signs—one on either side of the counter.

Q. Will you indicate as far as you can almost exactly where the signs were with your pencil. That is, put an arrow pointing to a spot.—A. I would have to see. Here, and there

were two signs here; one for lisle stockings and one for lisle socks.

Q. I want to get it clear. Just one sign or two signs?—
562 A. One sign on either side of the counter.

Q. A sign here and a sign here?—A. No; just one.

Q. Now, which side of the post was it on, do you remember?—A. No; I don't.

Q. Was this entire section that is indicated on this chart the section which you sold stockings at?—A. We sell stockings on the tables, too.

Q. But you sell at each of the points indicated.—A. Yes; we sell stockings on this part, too, but there were no posts there.

Q. What was sold on this counter here?—A. Some lisles and woolen stockings.

Q. From this counter, could you see the signs?

Mr. AUSTIN. Mr. Horsky, would it be possible for you to stand behind so we might see it?

Mr. HORSKY. I am trying to get the Court to see it, too.

Mr. AUSTIN. I understand. It is very difficult.

Mr. HORSKY. Could you come up here and look at it?

Mr. AUSTIN. Yes.

By Mr. HORSKY:

Q. What is this square object in between the counter
563 where you say you sold the lisle stockings and the counter where you indicate the posting? It that a post?—A. Yes.

Q. Or a table?—A. No; not a table. These are tables here.

Q. And stockings were sold?—A. No; not here. That is another department.

Q. You don't sell stockings on these bottom rows at all?—A. No; that is not the hosiery department at all. That is the glove department.

Q. Let us mark this "A" for this item and "B" for this group; "C" for this group of tables, "D" for this, and "E" for this. Now did you sell stockings on A, B, C, D, and E?—A. That is right.

Q. Not; not on F?—A. These are glove tables right here.

Q. Did you sell stockings on these tables?—A. No.

Q. You did not sell them on the part marked "E"?—A. No. We sold them here.

Q. The part marked "C" and not the part marked "E."—A. No.

564 Q. There was a sign on this post?—A. Yes.

Q. There were two signs on this?—A. Yes.

Q. Is that a post?—A. Yes. It is a post in the back; yes.

Q. And there were no signs on this?—A. No signs on the settings. There might have been a ceiling price there, but I do not know: I wouldn't be certain about that.

Q. You do not know whether there was a sign on that table or not.—A. No, sir.

Q. Now the signs that were on the posts on this section which I have marked "D" and which you stated has two signs—what kind of signs were those, Miss Rothenberg?—A. They were flat signs, and they were pasted on these posts with adhesive paste.

Q. How big were they? Were they larger or smaller than this picture?—A. Larger than this—cardboard.

Q. Were they square?—A. No; oblong.

565 Q. And they were made of cardboard.—A. Yes.

Q. And about what height were they? about a height of my eyes or farther down or way up?—A. No; lower than your eyes. The counter is low, and the post would be a little lower.

Q. Now, what kinds of stockings were sold in this section which I have marked "D," Miss Rothenberg?—A. Kaiser.

Q. I mean, were all kinds of stockings sold at this section?—A. No; not all kinds. All kinds with the exception of woolen and lisles and sport socks.

Q. Were these signs posted on these two posts—did that indicate the ceiling price on all stockings or just the stockings sold at that counter?—A. Just the stockings sold at this counter.

Q. Now, this section which I have marked "A" and which you said is a section where stockings are sold, what kinds of stockings are sold there?—A. Sport socks—when was this investigation taken, because we did change the department around?

Q. Approximately the end of September and 1st of October. What was it at that time?—A. We had lisle stockings and sports socks.

566 Q. What did these signs that you have indicated on this counter state?—A. Lisle socks and sports.

Q. Ceiling prices on those particular kinds of stockings?—A. That is right.

Q. And the size is?—A. A little larger than that picture.

Q. Now in this section I have marked "B"——A. I don't remember a sign being there.

Q. What kind of stockings were sold there?—A. Some rayon stockings.

Q. Now were those the same kinds of stockings that were

sold anywhere else in the department?—A. Yes; the same kind of stockings, but not the same manufacturer.

Q. If a person bought a stocking at the section marked "B," could he find anywhere in the department a ceiling price posted for it?—A. I am not quite certain.

Q. That is, you do not know whether there were these signs?—A. No; because we did change the stockings around from time to time.

567 Q. Was there a posting in the rayon department?—A. Yes.

Q. Where was that?—A. In here.

Q. On the D section?—A. That is right.

Q. Sign?—A. Yes.

Q. Now, on this set of tables, what kind of stockings were sold there at this time?—A. I think there were $.079 and $1.00 stockings.

Q. In C the same as in the B section?—A. That is right.

Q. And the signs for those would be posted on the D?—A. I do not know whether they were posted.

Q. There were no signs on the table?—A. Yes; there were signs on the table, and I think they had a ceiling price on the top of the sign. There was this square—triangular sign, and I am quite certain there was a ceiling price saying "Rayon, $0.79."

Q. If there was not a sign there, would there be a sign anywhere else?—A. No.

568 Q. They would not be included on these signs?—A. No; they would not.

Mr. HORSKY. I would like to offer this in evidence, Your Honor, as defendant's exhibit JJJ.

(The documents were marked "Defendants Exhibits JJJ" for identification and were received in evidence.)

By Mr. HORSKY:

Q. Miss Rothenberg, you say that at the present time you have a different kind of a sign, is that right?—A. Yes.

Q. Would you describe, approximately, what this is like?—A. Well, like a picture frame, and the signs are right in the frame—right in front where the merchandise is being sold. It is a much better way. When the customer comes over she can practically pick the ceiling prices up in her hand and look at them as she stands there.

Q. Are the prices marked on the stockings themselves—the ceiling prices?—A. Yes. The system today—I don't say they

are all marked, but the new merchandise coming in has ceiling prices marked on the tags.

Q. On the stocking—the individual stocking?—A.
569 That is right. Every stocking has a price tag, but I would not say they all have ceiling prices on, because this is a new system that has been installed for—I don't know when. How long has that been installed? Just a few months ago.

Mr. HORSKY. That is all.

Cross-examination by Mr. AUSTIN:

Q. Now, it is a fact, is it not, Miss Rothenberg, that until about October 1st you had made out no Hecht's OPA 7 forms for new merchandise?—A. No; I did not.

Q. That was because you did not understand the use of those forms?—A. Well, as I said, we had green stickers on our yellow confirmations, and I understood that if the stocking had the same use and it was in the same price line—the same price range—you did not have to make out an OPA sheet No. 7, which I have learned later that you do, and I make them out for every one.

Q. In other words, up to that time, around approximately October 1st, you had come across no occasion which, in your mind, had needed the use of OPA 7.—A. That is right.

Mr. AUSTIN. I believe that is all.

The WITNESS. That is all?

Mr. HORSKY. I will recall Mr. Etelson, Your Honor.

570 Redirect examination by Mr. HORSKY:

Q. Mr. Etelson, you are the same Mr. Etelson that previously testified?—A. Yes, sir.

Q. You have heard the testimony, Mr. Etelson, with respect to the omission from the lists which were required to be filed by the OPA of these various items in this department, have you not?—A. Yes, sir.

Q. Did you at the time of the investigation change the system by which the price control office checked on the filing of these OPA No. 7's and the new listings?—A. Yes, sir. We changed as soon as I had an opportunity to get at it. Prior to that I spent most of my time working with them.

Q. I referred to the price office of the Hecht Company.—A. That is right.

Q. In order that the Court may understand what that was, will you describe the system which was in existence prior to the time of the investigation with respect to the check that the

price control office of the Hecht Company would have on the filing of the OPA 7 form and the listing?—A. Up to the
571 time of the change instructions had been issued to the buyers to file OPA 7's for new merchandise when it was received, and the filing was their responsibility.

Q. When you say "when it was received," how do you mean, Mr. Etelson?—A. I mean when the merchandise was received in stock, not at the time the merchandise was purchased, because many things can happen between the time the merchandise is purchased and the time it comes in.

Q. So the instructions were they should make out the OPA 7 forms when the merchandise was to be on the shelf, is that right?—A. That is right—when it came to the floor.

Q. What control did the price office have over whether they were doing that or not?—A. We had no real control of it.

Q. Did you have anything—well, these green stickers that you referred to were for what purpose?—A. For the purpose of reminding the buyers to do that work.

Q. At the time of the investigation were many OPA 7 forms being filed for new merchandise?—A. Oh, yes.

Q. Throughout the store?—A. Oh, yes; quite a number.

572 Q. Do you know how many had been filed, say, up to the 1st of October?—A. Well, I would say at least several thousand had been filed.

Q. Now after you discovered that——A. [Interposing.] I mean—pardon me—between the filing of the original list and October.

Q. Yes. After you discovered from the investigation that all the OPA 7's were not being filed, what was the new system which you put into effect?—A. The new system is this: Every order which a buyer makes out goes to the merchandise control office, which is another office, and there it is checked against the budget and the buying power for the department, and when it passes through the merchandise control office it is then sent to the price control office; to my office.

When it reaches my office there must be one of three types of information with that confirmation or with that order.

If it is merchandise which is identical to what has already been registered, then there must be on the confirmation in green ink alongside of that confirmation the page and line number where that item already appears in the book and the ceiling price for the item so that we can check it against
573 the ceiling price.

Where there is not a record in green ink as to where that item has already been registered, then there must be an

OPA 7 attached to the confirmation giving the comparison of the similar or same item in stock or in a competitive store.

Where there is no similar item to compare with in our own stock or a competitive store, then there must be a copy of the form 3–A attached, which we call our "formula form," which is a method for establishing ceiling prices through the OPA.

After the confirmation reaches our office, we have a staff which checks the confirmation and the OPA 7's or the 3–A's which are attached.

If the information, in the judgment of the checker, is complete and sufficient, then the confirmation is sent with the information still attached to the invoice office, it is on another floor in our building for certain departments and is in the warehouse—in the service building—for other departments.

This confirmation and the attached information is kept in the invoice office until the invoice comes in. When the invoice for the merchandise comes in, the girl checks it against the confirmation, and on the invoice she places the retail price in red ink s has been the custom right along, as we have
574 always done, and she places the ceiling price in green ink on the invoices. She files the invoice or the confirmation in the usual way and then sends the OPA 7 or 3–A form back to the price control office so that we can copy it into the records for the Office of Price Administration or for our own office, and then we file the form itself.

Then, when the invoice copy is passed on to the marker and the marker makes up price tickets putting on the retail price, which is taken from the red figure, and putting on the ticket itself the ceiling price, or our ceiling is taken from the green figure.

Of course, there is not anything to do after the information is on in green ink, because it has already been registered, but the ceiling price does go on the price ticket.

In the price control office we don't release any confirmations to the invoice office until we have satisfactorily established the ceiling price.

If the information is not established to our satisfaction, then we hold it until we get the buyer or assistant buyer to check it or take whatever steps we have to take to be sure to our own satisfaction that the ceiling price is correctly established.

Q. Under that system, Mr. Etelson, is it possible for merchandise to get on the floor to be sold before you have a
575 ceiling price established?—A. No; because the invoice office cannot release the confirmation or cannot release the invoice until they have a ceiling price, and therefore the

merchandise cannot be marked until the ceiling price appears on the invoice.

Q. Now this system has been in effect about how long?—A. Since sometime in November, I believe, to the best of my recollection.

Q. It was the result of the investigation?—A. Yes; and, frankly, we are improving that as we go along.

Q. Now you state that the ceiling price is to be on the price ticket. That was not the prior system, was it?—A. No, sir.

Q. When was that change made?—A. Since the investigation.

Q. And is it your intention now to put a ceiling price and a retail price on each ticket?—A. That is right, so we can do away with posting entirely. There are some disadvantages to posting, and when everything is marked; with the ceiling price on the ticket, then it won't be necessary to have any posting at all, and that is our aim.

Q. Now you have also heard the testimony, Mr. Etelson, with respect to mark-ups as having been taken improperly or not adjusted properly. Will you explain whether you
576 have changed the system as to the control of mark-ups?—A. Yes.

Q. And will you explain what the new system is.—A. Every mark-up sheet must now pass through the price control office, and every cancellation of reduction must pass through the price control office. They must have complete information on them as to manufacture and style number and a description of the merchandise, and we must check it against our ceiling price lists to be sure the price is properly established, and it must be approved by my office before the goods can be marked up.

Q. Is it approved by anyone else in the store?—A. Well, mark-ups go through the merchandise control office also, but they must be approved by my office before anything can be done with it.

The Court. That will be all for now.

I will say, gentlemen, that for some time I have been assigned to sit tomorrow in a three-judge matter—three-judge court.

I am sorry that I have to interrupt this trial, but it seems necessary, so at the conclusion of the work today we'll recess until Monday morning, and I am mentioning that now so you gentlemen will have time to make other plans.

(Recess for lunch.)

577 (Court reconvened at 1:30 p. m.)

Mr. Austin. If the Court please, I have talked to Mr. Horsky about it, and Mr. James had to go to the railroad station as his wife's father is ill and she was going to the South

where he is. He will be a few minutes late. I wondered if we might have a few minutes before he comes.

The COURT. Would you like to wait?

Mr. AUSTIN. If you please.

The COURT. Yes.

Mr. HORSKY. We can come and inform Your Honor, if you prefer, when he comes in.

The COURT. You think it might be five or ten minutes?

Mr. AUSTIN. It might be as much as ten. If it is longer than that we can start.

The COURT. Very well. Did you find out about Mr. Brown?

Mr. AUSTIN. We now find that Mr. Brown is to take the oath at 2:30, and we will report to the Court as soon as we find out.

The COURT. Very well.

Mr. AUSTIN. We will inform Your Honor.

The COURT. All right. We will take a short recess.

Mr. AUSTIN. Thank you very much.

(A short recess was taken.)

LOUIS G. ETELSON resumed the stand and further testified as follows:

578 Direct examination by Mr. HORSKY:

Q. Mr. Etelson, at the luncheon recess you were describing to the Court the present procedure which the store has with respect to the filling out of Form OPA No. 7, is that correct?—A. That is correct.

Q. Just so the record will be perfectly clear, that system was put into effect before this bill of complaint was brought?—A. Yes, sir.

Q. Substantially before that time?—A. Yes, sir.

Q. There is one phase of it, I think, that you haven't cleared up. Will you explain to the Court what happens to these OPA No. 7's with respect to the filing of lists with the War Price and Rationing Board as you are required to do?—A. These OPA No. 7's after the merchandise is received and the ceiling price is placed on the invoice, are returned by the invoice office to my department and then we break them down into cost of living commodities and noncost of living commodities, and we type a list of the cost of living commodities in four copies, one which has to be filed with the War Price and Rationing Board by the tenth of the following month; one copy for our own office; one for the buyer, and one for the merchandise manager. Then we type a list of the noncost of

579 living commodities which do not have to be filed with the War Price and Rationing Board, but we prepare

the list for our own files and for the buyer and for the merchandise manager. These lists are prepared by department and filed by department.

Q. Do you accumulate the forms for a particular period before you type the lists?—A. Yes; we accumulate the forms up until perhaps the end of the month so that we can type it in time to file it by the tenth of the following month.

Q. And you accumulate them by departments?—A. Yes, sir; and then we file the OPA No. 7 in our files so that if there is any question about any item that has been listed we can always refer back to the OPA No. 7 for the proof of the ceiling price.

Q. Under this system, Mr. Etelson, is it still possible that there can be improper ceiling prices on a particular lot of merchandise?—A. Yes; it is possible. I mean a girl can transpose a wrong figure from the confirmation or from the OPA No. 7 to the invoice; or the girl who marks the goods can transfer a wrong figure from the invoice to the marking ticket or she can hit the wrong key on the marking machine. I mean anything is possible.

Q. Your own opinion is that the system can't result in perfection?—A. We try to make it as close to perfection as
580 possible, but we don't have perfection.

Q. You don't know of anything you could do to it that would make it perfect?—A. No; because the human element enters into it, and I have no way of overcoming human errors.

Q. Is that also true with respect to listing? Could there be mistakes in listing?—A. Yes; we have found typographical errors in the lists. The typist will copy the wrong ceiling price off the OPA No. 7 or hit the wrong key on the typewriter or put down the wrong information. It doesn't happen very often but it can happen.

Q. Have you had any suggestions from the Office of Price Administration as to any way in which you might improve this system?

Mr. AUSTIN. I object.

The WITNESS. No, sir.

Mr. AUSTIN. Objection, please.

The COURT. He may answer.

Mr. GORDON. The answer was no, wasn't it?

The COURT. Yes; the answer was no.

Mr. HORSKY. Your Honor, I have explained to Government counsel that at this stage with this witness I have concluded my evidence with respect to the three departments which have been talked about, Departments 47, 55, and 26. I wish to

offer to the Government counsel, if they wish, the cross-examination of this witness on those departments now.
581 I think they have indicated to me that they would prefer to wait and cross-examine Mr. Etelson at the conclusion of the entire testimony that he is presenting.

The COURT. Is that your wish?

Mr. AUSTIN. We are agreeable to that.

Mr. HORSKY. I would like to withdraw Mr. Etelson and put on the buyer for one more department.

The COURT. Yes.

Mr. HORSKY. I will call Mr. Levinson.

I. ELLIOTT LEVINSON, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Will you state your name to the reporter, please?—A. I. Elliott Levinson.

Q. Your address?—A. 2709 Woodley Road, NW.

Q. You are employed by the Hecht Company?—A. Yes, sir.

Q. In what capacity?—A. I am the merchandising manager of the homewares division; also the acting buyer in the bedding department.

Q. As it is, you are both a merchandising manager and a buyer?—A. Yes.

Q. As merchandise manager you are over what sec-
582 tion of the store's business?—A. Several departments. The radio department, the toy department, the infants' furniture department.

Q. How are they numbered?—A. By 80, 68, 71, and 72.

Q. Those are not the departments that were investigated?—A. No, sir.

Q. You are also merchandise manager for Department 60?—A. That's right.

Q. And that is one of the departments that was investigated?—A. That's right.

Q. At what time did you also take over the duties of buyer in that department?—A. Around the first of April. The buyer left the store around the first of April or the latter part of March, and due to the fact that several items in my department, like refrigerators and washing machines, had become inactive due to Government regulations, I took over the buyership of the bedding department rather than getting anyone else to step in.

Q. And since about the first of April you have been both the buyer and the merchandise manager in that department?—A. That's right.

Q. Mr. Levinson, do you recall in the preparation of your list of commodities in Department 60—that is, the bed-
583 dining department—when the lists were prepared in compliance with or under the General Maximum Price Regulation?—A. Yes, sir.

Q. How did you go about preparing that? Will you explain to the Court exactly how you did it?—A. Yes, sir. We had a series of black books in our department, one for each classification. There is a black book for mattresses, one for studio couches, and one for beds. We had a girl keep those black books up, which were supposed to be a copy of the guide card kept in the warehouse. When the rule first came out we were instructed to make the list. I had the girl go to the warehouse and check these books against the guide cards in the warehouse. When she came back I listed everything on the floor that was on the floor and then went to the black book and added the items that were in the black book that were not on the floor. In several instances the price in the black book was different from the price on the floor, and we adjusted the tickets at that time.

Q. In Department 60 you do have sales tickets, do you not?—A. Sales checks?

Q. Yes; sales checks.—A. Yes.

Q. And those sales checks show specifically the item that was sold so it can be identified from the check, is that right?—A. Yes, sir.

584 Q. And those checks also show the actual date upon which an article was delivered and the price paid for the article?—A. Yes, sir.

Q. Did you consider, Mr. Levinson, whether you should go to those sales checks in determining your highest delivered price in accordance with the regulation?—A. No; I did not.

Q. Where are those sales checks kept?—A. They are kept in the adjustment office.

Q. Where is that, physically?—A. Well, two floors below my office or two floors below the bedding department.

Q. In other words you did not go to these tickets?—A. No. I did not.

Q. Did you in fact in some instances take prices different than the price the article was selling for at the time you made the list?—A. Yes; because when she checked the black book with the guide card, it showed us the price that was on the guide card and sometimes there was an error. There was a chance of error in taking it on the floor and therefore we'd correct it.

Q. Did you try and remember at the time whether a partic-

ular item had been delivered in March at a higher price?—A. Yes; a great portion of it was from memory.

585 Q. Did you ever mark an article down because you remembered it had not been delivered at the higher price?—A. I can't tell you exactly because I don't remember whether I did at the time or not.

Q. But you tried to remember at that time?—A. I tried to remember at that time.

Q. Mr. Levinson, the Government has introduced as Plaintiff's Exhibit 33 a list of items entitled, "Merchandise Not Sold in March and Not Appearing on Any Ceiling Price List by October 10, 1942," and it contains a number of items. In connection with that exhibit are you familiar with the store's Form OPA No. 7?—A. Oh, yes.

Q. Have you made out such forms?—A. Yes, sir.

Q. What would be the reason that you could give the Court as to the absence of these items from the price list?—A. May I see it please?

(The witness was shown the exhibit.)

A. Some of these items are listed.

Q. Some of them are listed?—A. Yes, sir.

Q. Have you investigated this exhibit with Mr. Etelson?—A. I have.

Q. Will that help you indicate to the Court which ones are listed and where?—A. You want me to take each item separately?

586 Q. Each item that you find is listed.—A. Well, Factory 31, No. 14.

Q. That's the third item on the exhibit?—A. That's right. It is listed in the book.

Q. What place is it where that is listed?—A. I don't have that number here.

Q. I am sorry. Here is a copy. I hand you Plaintiff's Exhibit 30 which is the list for your department, is that right?—A. Yes.

Q. Would you show the Court where that item is listed?—A. Yes, sir; it is listed right here.

Q. Would you indicate it by page and line?—A. The first item on that page. It is marked here page one.

Q. We would like to be able to find them on our copies, Mr. Levinson. Would you indicate where that is?—A. Well, this page here is marked page one.

Q. Page one?—A. There are two items on the page and it is the top line of that.

Q. Look on the back. There is a number and a letter on the back of the sheet, Mr. Levinson.—A. It is 30-G.

Q. Exhibit 30-G?—That's right.

587 Q. And it is the second item on that page?—A. It is the top item on that page.

Q. The first item on that page?—A. The first item on that page.

Q. All right. Does that apply to the fourth item on that list of items allegedly not listed?—A. The 31-14 sofa bed that is on this page is listed; that's the one it applies to.

Q. Now, the next item on that page. Will you tell me which is the next one.—A. The next one is 67-903.

Q. Yes.—A. 903 is the incorrect number.

Q. It should be what?—A. The correct number is 703.

Q. 703?—A. Yes, that is the correct number, and that appears on page three—the 25th line.

Mr. HORSKY. Did you find that, Mr. Austin?

Mr. AUSTIN. No, I am not sure that I do. What is the number down?

Mr. HORSKY. 25. It is the 25th line, $125.

Q. All right. What is the next one that you find is listed Mr. Levinson?—A. The next one is 1135.

588 Q. That's about ten lines down, is that right?—A. Yes.

Q. Modern lounge?—A. That is No. 13 on these numbers down.

Q. And where is that listed?—A. That's on the last page of this exhibit, line 7.

Mr. AUSTIN. What number do you have on your ceiling price, Mr. Levinson?

The WITNESS. 7515 is on the ceiling price.

Mr. AUSTIN. Is that the October 10 supplement?

The WITNESS. That's right.

Mr. AUSTIN. Do you find it on your sheet, Mr. Horsky?

Mr. HORSKY. Yes, sofa-bed.

Q. How does the line you are referring to on this last sheet read across, Mr. Levinson?—A. It reads "sofa-bed."

Q. 60?—A. 60. Simmons sofa-bed 7515.

Q. Is there a figure in there or not—in the column entitled "style"?—A. No, there is not.

Q. Just to clear up one matter before you go ahead, Mr. Levinson. Under "manufacturer's number" on the list that you have in your hand, the first number, 60, refers to your department, is that right?—A. Yes.

589 Q. And the second number after the dash, which may be 12 or 36 or what not, is a code number for a manufacturer?—A. That's right.

Q. It wouldn't necessarily be the same number as the one entitled "factory number?"—A. No.

Q. It is a separate code number worked out for OPA?—A. For the alphabet, yes.

Q. Do you find another one which is listed, Mr. Levinson?—A. Yes. The sleep chair, 177, on page 4, line 7.

Q. $34.95?—A. $32.50. It is line 7.

Q. That's right. I am sorry.—A. $32.50. That would apply to both those lines 15 and 16 on this sheet.

Q. Do you find others that are listed?—A. Yes.

Q. What is the next one?—A. 307–25, studio, listed under 307 studios, various covers.

Q. The same page, two lines down, am I right?—A. Yes.

Q. I refer you to page 4, line 9, and ask you if that is correct?—A. That is correct; 307 in various covers.

590 Q. That applies to 307–25, studio; wine, green, and the others?—A. That's right.

Q. The three though are listed there as 307–25?—A. No; there are two.

Q. Excuse me, the third one is 307–45. Do you find others that are listed?—A. Yes.

Q. What is the next one?—A. 1032, spring.

Q. Where is that listed?—A. Just one second. I have a note over here; "OPA No. 7 was put in on that spring."

Q. Could I refer you to page one of the sheet filed on August 10, Mr. Levinson?—A. Yes.

Q. And ask you to look at the third item on that?—A. I wouldn't want to say unless I saw—I think there is a file there of OPA 7's, and I found it in checking through—I found that it was in there.

Q. I hand you, Mr. Levinson, an OPA 7 form dated July 28, 1942, and ask you if that is the form you filled out for it?—A. That's the form I filled out for 1032, spring.

Q. Does it include the style number on the OPA 7?—A. Yes, the style number is 1032, as compared with the Simmons 2454 which we sold in March.

591 Q. Does this OPA No. 7 represent the source of the information on the third line?—A. Well, I haven't got the top sheet here which would give me the factory number.

Q. Just a moment. Is that the code number?—A. Yes, that's an Englander spring. That's the code number and the ceiling price is $15.95.

Q. In other words would you say that you made out this form properly?—A. Yes, sir.

Q. And the code number—I mean the style number should appear——A. In here, after this code number.

Q. Yes. I will introduce this OPA form as Defendant's Exhibit KKK.

(The document was marked "Defendant's Exhibit KKK" and received in evidence.)

Q. Do you find any other items on this exhibit that are listed?—A. Yes, sir. No. 1072.

Q. Springs?—A. Yes. I am quite sure that there is an OPA 7 in there for 1072 and 1073.

Q. Is that the OPA No. 7 form to which you refer?—A. This is it; yes, sir.

Q. And that is what style number?—A. That is 1073 and 1072.

592 Q. And the date of that is November 6, 1942?—A. That's October 23.

Q. What is the stamp number?—A. November 6, 1942. I don't know what that stamp is. That's the date I made it out.

Q. The date is what?—A. October 23.

Q. When was this item received?—A. It was received July 27.

Q. So that this should have been made out earlier?—A. Yes, sir.

Q. And probably does not appear on that list?—A. That's the reason it doesn't appear on the list.

Mr. AUSTIN. You say it does not appear on this list?

The WITNESS. It does not appear on this list.

Q. It appears on the subsequent list?—A. I have more lists in my book than this list.

Q. Yes. Do you find any other items that appear on the list that you have in your hand?

Mr. AUSTIN. Pardon me if I may interject here. Does that same apply to 1073?

The WITNESS. 1072 and 1073.

Mr. AUSTIN. All right.

Q. 1195, box springs, where do they appear on the
593 list?—A. On page 2, line 46.

Q. What does "Bot." refer to?—A. I don't know. "Box spring" is what it should be.

Q. It should be "Box."?—A. There is no such thing as "Bot."

Q. It doesn't mean "Bottom Spring," does it?—A. No.

Q. Now that leaves some items, Mr. Levinson, that are not listed. Would you tell the Court why those items did not appear on the list?—A. The only answer I can give is that we received hundreds of items during that period. While I tried

to cover each one of them, this shows a possibility that I overlooked some of them.

Q. This shows a possibility that you did?—A. This shows I did overlook some of them.

Q. And you did make out OPA 7's during this period?—A. Many of them; quite a few.

Q. That's all, Your Honor, for this witness—for me.

Mr. AUSTIN. I have some questions to ask now.

Cross-examination by Mr. AUSTIN:

Q. Mr. Levinson, the sales checks in the adjustment department show the delivery date, do they not?—A. Yes, sir.

594 Q. And that was, was it not, a source to which you could have gone to *to* have gotten the March prices—the March delivered prices?—A. Yes; that was a source.

Q. And that, as a matter of fact, is the best source, is it not?—A. No. I wouldn't say that, because in drawing a picture of that department where all those sales checks are housed, they are all housed alphabetically and cover the year, and for me to go in there and start pulling out all the sales checks that were delivered in March would have taken me from three to four months to do it.

Q. Couldn't you have gone to the guide cards and taken off the sales that showed sales from March 31 back and then have taken those sales as they were listed alphabetically and gone to the sales checks in the adjustment department?—A. It still would have taken me three or four months to do.

Q. You wouldn't have had to look through every sales check, would you?—A. No; but I would have to look for every one of those by name.

Q. They were filed alphabetically?—A. Yes; but the writing is very small and many of those names are almost impossible to read. Then they would have amounted to so many that I doubt if it would be humanly possible for any one person to go in there in any month or two months and pull them out by himself.

595 Q. Are those sales checks in the adjustment department for a period of years or are they kept from January 1 to January 1?—A. Well——

Q. Or do you know?—A. I don't know their system exactly.

Q. You don't know?—A. No. I know that they are down there.

Q. Then, Mr. Levinson, referring to the item on Exhibit 33, 159–1135, modern lounge, which you say is on your ceiling price list——A. Yes.

Q. Will you find that on your ceiling price list?—A. On the last page.

Q. No style number appears for that item on that page, does it?—A. No.

Q. All right.

596 WITNESS. Levinson.

Cross-examination by Mr. AUSTIN:

Q. And referring to the item, Style 177 KK 333 G, on Exhibit 33, which you say appears on page 4, line 7, of your base period list, Mr. Levinson——A. Yes.

Q. That does not have a style number on the base period list, either, does it?—A. No—just a minute, now. In the ——

Q. I didn't get your first answer. It does not, does it?—A. Wait a minute. In the factory list——

Q. Just a minute, please. If you will answer the question, then you can give your explanation.—A. 177 is the factory and all the lead checks from that factory are under one price on my base price list.

Mr. AUSTIN. Will you read the question to the witness?

(Question read: "That does not have a style number on the base period list, either, does it?")

A. No; it does not.

Q. Now, the item referred to in Exhibit 33 as 307–25 which you say, Mr. Levinson, appears on page 4 at line 9; it appears as $34.95, does it not?—A. That is right.

Q. And what is the number which appears in the

597 column entitled "Style"? It is a manufacturer's number, isn't it?—A. 307 is that manufacturer's number.

Q. Did you check this Exhibit 33 with respect to the sales of these items at $39.95?—A. What was the question again, please?

Q. I say, did you check Exhibit 33 with respect to item Style 307–25 so far as it appears on that exhibit that it has been sold at $39.95?—A. Where you say "C 17, green"; is that it?

Q. "C 15, wine."—A. Was subsequent sale at $39.95?

Q. Yes.—A. Well, I checked that on the violation list and I think I have a note that I would like to refer to before I answer that question.

The COURT. You may do so.

Mr. AUSTIN. I just asked him if he checked.

The WITNESS. I did check; yes.

Q. Now then, I believe you were able to find the item which appears on the Exhibit 33 as 60–1032 on the ceiling price list?—A. On this price list?

Q. Yes; on your price list. Were you not?—A. No. I said that was put in OPA 7.

Q. I beg your pardon. That is right. Were you able
598 to find the following? I beg your pardon. I am referring to 60–1032.—A. That is right.

Q. And you were unable to find that on the list?—A. That was put in by OPA 7.

Q. I am asking you if you were able to find it.—A. It was not titled, but the OPA 7 you handed me here as an exhibit refers to the same item that is on this page. Just a minute and I will give you the page. It is page 1 and line 3 here in this.

Q. Page 1, line 3?—A. Yes.

Q. Which supplement is that, Mr.——

Mr. HORSKY. The one that is dated August 10, 1942. Is that right?

The WITNESS. Yes.

Q. That item on the ceiling price list has no style number does it?—A. That is right.

Q. Now then, as far as items 60–1072 and 60–1073, you were unable to find those on the list, were you?—A. Not on this.

Mr. AUSTIN. That is all, I believe.

Mr. HORSKY. No more questions.

Witness excused.

599 Mr. HORSKY. I will recall Mr. Etelson.

Thereupon, the witness, L. G. Etelson, was recalled for further examination and testified as follows:

Direct examination by Mr. HORSKY:

Q. Mr. Etelson, have you made an examination of the exhibits introduced, with respect to Department 60?—A. Yes, sir.

Q. Have you examined particularly the items listed in Plaintiff's Exhibit 31–A through O?—A. Yes, sir.

Mr. HORSKY. That exhibit as Your Honor will remember purports to list the highest March price and subsequent sales.

The COURT. Yes.

Q. First on that list is a sale to W. D. Fairfax of a mattress. The price listed is $19.99 and there are a number of subsequent sales at prices of $22.99 and $29.50. What did your investigation reveal with respect to that item?—A. Pardon me; may I have a copy of the exhibit, please?

Q. Yes; I am sorry. You may use this one. Let me withdraw that question for a moment. I hand you a document which I think is known as a guide card. I would like to have you explain to the Court what that thing is and what it
600 is used for. Is it called a guide card?—A. Yes; we know it as a guide card and it serves as an inventory of the

record in the warehouse service building for each commodity. On this guide card is entered the factory and style number and the article and usually always the confirmation number on which the merchandise is received, the quantity received, the retail on the confirmation, and then the sales, the subsequent sales. The sales are noted on here by date, and then the customer's last name only. Where it has the customer's last name it is entered in here, and where it says "received" in there is entered the last half of the sales person's number. As an example, in Department 60 sales number may be 6001 or 6002; always a 60 in front of it, and under here would be the 02 or 01, merely the last part of the sales person's identifying number. Then it would show the quantity sold to that customer, which would be deducted and the balance in the balance of the column, and the price or the amount of the sale that was made.

Q. Where are these cards kept?—A. In the service building or warehouse, whichever you may call it.

Q. And when is the entry made on the card, and by whom? Suppose a mattress, as we are coming to, was sold. Who makes the entry on the card as to the sale, the number and the prices?—A. The entry is made by one of the clerks over there.

601 Q. At the warehouse?—A. Yes. He is in charge of that particular work.

Q. This is not kept by the sales person?—A. No; the entry is made by a clerk from a copy of the sales check.

Q. Suppose a customer returns the merchandise; what happens to this guide card?—A. The return is noted in here, usually in red pencil—in red—with the customer's name again and the amount credited.

Q. And how does she determine how much to put as the amount of the credit? She does not have a sales check then, does she?—A. She gets a credit slip.

Q. From whom?—A. From the store. I don't know just who it comes from over there, but from the store.

Q. And she puts down the customer's name again?—A. Yes.

Q. And the amount of credit?—A. Yes.

Q. Suppose that more merchandise is received of this same character. Is a new card made out for each shipment?—A. No. If it is merely a re-order of merchandise, that is already on this guide card; then the date of the confirmation and the number of the confirmation and the quantity is added on to the guide card which is already in the file.

602 Q. Well, when a guide card is filled up, what happens?—A. They follow it up with another one. I mean,

there may be many, many guide cards for one item if it runs on and on.

Q. Now, let us get back to the question I asked you before, with respect to these mattresses on which the March price was said to be $19.99. Will you explain what you discovered with respect to that item?—A. Yes. My investigation of this item disclosed that the mattress, this mattress was sold at $19.99 in March.

Q. And that was the highest delivered price?—A. Yes. I was about to explain that it was also sold at a higher price of $22.50 or $22.99—I cannot recall at the moment. However, the highest delivered price in March was $19.99; the others were delivered on the first or second of April.

Q. Is this mattress a standard mattress?—A. Yes, sir.

Q. Are the sales of this mattress as would be indicated, to the number subsequent to March, on this exhibit?—A. Yes, sir.

Q. With respect to the mattresses, I notice there are 3–3 mattresses and 4–6 mattresses. Will you explain that?—A. Yes. It is the size, either a single or double size, and that merely indicates the size.

Q. Do the prices of mattresses vary, depending on
603 size?—A. No. The price of the same mattress is the same in all sizes. The size does not have anything to do with the price, and you pay twice as much for twin mattresses as you do for a single double mattress.

Q. You pay for each twin mattress the same as you would for a double mattress?—A. Yes; that is right.

Q. That is always true?—A. Yes; that is the custom.

Q. So, your investigation reveals that these mattresses listed on this exhibit, above $19.99, were actually sold at more than the highest delivered March price?—A. That is right.

Q. Is it—were they actually more than—or, let me ask you: How did the $19.99 and $22.99 and $22.50 prices happen to be different? What was the reason it was sold in March at $19.99? Was it a sale?

A. Yes; that was a sale period; half-yearly sale.

Q. Does the Hecht Company usually have a sale of furniture and home wares?—A. Yes; we usually have a sale twice during the year.

Q. Which occurs when?—A. In the winter and fall it begins in January and through the middle of March, a half-yearly sale of furniture and home wares.

604 Q. That same explanation, Mr. Etelson, refers to all of 9169? The others are merely cover numbers.—A. And the sales at that price were above ceiling price, above the highest price.

Mr. AUSTIN. Again, for the purposes of the record, we wish to object to all questions propounded to Mr. Etelson, and answers by him, which purport to explain or excuse or would identify failures on the part of the Company, to establish either the correct ceiling price or the reasons for sales over the ceiling, for the reason we feel they are immaterial, on the same grounds as we have formerly argued, I believe.

The COURT. It will be received, subject to that.

Q. Referring to that Exhibit number——A. It looks like 31–A.

Q. 31. What is the next item which you investigated?—A. Sale to W. J. Hammacher, on a 33, at $9.95.

Q. And sales listed thereafter at $12.95?—A. Yes. This is 86630, and the highest price at which this particular mattress was delivered in March was $9.95.

Q. In this case, again, the sales listed at $12.95 were above the highest delivered March price?—A. Yes, sir.

Q. Again, was this a mattress which was on sale in
605 March?—A. I am not sure of that.

Q. Excuse me; I should make that question more clear. Was this a mattress that was on special sale in March?—A. Well, the answer is the same; I am not sure.

Q. The next item, Mr. Etelson, the 866 Sound Sleep mattress listed at $17.77, of this exhibit, with sales at $22.50. Did you make an investigation of that one?—A. Yes, sir.

Q. What did that reveal?—A. That reveals that this mattress was never sold above $17.77, and that these items, or these sales above ceiling price shown here in the exhibit, are sales in 1941 and not in 1942.

Q. What was the basis upon which you reached that conclusion?—A. This is the guide card.

Mr. HORSKY. Show it to the Court, please [witness does so].

A. This is the guide card from which the sales alleged above the ceiling price were taken. The number of that guide card showing the confirmation 3–025, was this confirmation here, and this confirmation was signed by Mr. Milgrim who was the buyer last year and left the store this year. He was not here after March, 1942. So that is a record of 1941.

Q. Does the confirmation have a date?—A. No. The
606 confirmation is dated October, and Mr. Milgrim was not here after March of this year.

Q. Do those names on the guide cards which you handed to the Court correspond with the names on the exhibit?—A. Yes; they do.

Q. Would you read them to the Court, so he can see the

similarity?—A. The names are Wingo; Saisfield, Flach, and Murphy twice.

Q. Will you point out to the Court where those appear on that card [witness does so]?

The WITNESS. And this one just below the confirmation number, that is the first name Wingo, just below that confirmation. And here is Saisfield, right here. And Flach, is just below the Saisfield name. And these two Murphy names just below that.

Mr. HORSKY. I will put these in evidence, Your Honor, as triple L (LLL) and triple M (MMM).

A. Now, if I may——

Q. Wait just a moment, Mr. Etelson. Will you continue your explanation?—A. Yes. This is the card for 1942 for the same item and it shows Townshender, at $17.77.

Q. Your investigation, then, was that there were no sales above highest delivered March price, with respect to this item?—A. That is right.

607 Mr. HORSKY. I think I better introduce this card too, Your Honor, as Defendant's Exhibit triple N (NNN).

Q. Will you take the next item on the exhibit and explain what you found with respect to the mattress at $19.99 and two sales at $22.50? That is 307 Sleep Way mattress.—A. This mattress was not on sale in March. The first sale was made in April, because it did not come in until March 30th from the vendor, and they were sold at $19.99 and $17.99, the two sales made at $22.50, and no ceiling price had been established on the OPA 7.

Q. There is an indication on this exhibit that there was a delivery of this mattress on March 21st. Do you find any information with respect to that?—A. No; we could not find the sales tickets on this. I would say the two sales at $22.50 were above the——

Q. Above proper March prices.—A. We could not find the two sales checks in here mentioned at $22.50.

Q. At any rate, you cannot disprove the fact that these were improper sales?—A. That is right.

Q. All right. The next item is a studio, 307–25, in various colors, with the statement that the March price, March delivered price of $25, and sales at prices above that amount

608 in varing figures. Did you investigate that item?—A. Yes.

Q. What did you discover with respect to that one?—A. First I discovered a sales check, which evidently the investigators lost; showed a sale at $32.50, delivered on March 31st.

Q. Will you show it to the Court, Mr. Etelson?—A. Yes, sir. (Witness does so.)

Q. That is the delivery of 307-25?—A. Yes.

Q. And that was at $32.50?—A. Thirty-two-fifty.

Mr. HORSKY. I offer this in evidence, Your Honor, as Exhibit triple O (OOO).

Mr. AUSTIN. Will the Court pardon us just a moment?

The COURT. We will take a five-minute recess.

(Thereupon, the proceedings were recessed for five minutes.)

609 Mr. HORSKY. Your Honor, for the purpose of this exhibit and the purposes of Mr. Etelson's explanation of the other exhibits in this department, so far as price violations, or proper prices, are concerned, Mr. Austin has agreed that he would prefer to make his cross-examination as we go along, that he prefers to elucidate all the evidence from Mr. Etelson jointly. I have given him complete permission to ask him any questions at any time he wishes.

Q. What item were we on at the time we stopped?—A. On 307-25, studio.

Q. You had introduced or had shown me a check, which I introduced, showing a delivered sale in March for $32.50?—A. That is correct.

Q. I note there are on this exhibit sales of that same studio at prices higher than $32.50. What did you discover with respect to those?—A. I discovered those sales were made and that they were made because of a comparison with another item, which is the same item, only the number is different.

Q. Would you explain that in a little more detail, the basis on the propriety of the price can be judged?—A. 307-25
610 and 307-3 are the same item, from the same resource, except from the fact that they have different numbers.

Q. You mean they are identical, except the numbers?—A. Identical and same item, but the covers may be a little different, because 307-25 was a "special purchase" made up by the resource for the store specially.

Q. You mean the cover would have a different color?—A. Different pattern.

Q. Quality?—A. No; the quality would be the same.

Q. What is the highest delivered March price for 307-3, which, I believe, is the next item on the exhibit?—A. The proper price for that is $34.95.

Q. And you would say, then, that the proper price, or probably, for 307-25 is also $34.95, because they are identical items?—A. Yes, sir.

Mr. AUSTIN. I object to that.

Mr. HORSKY. I will withdraw the question and ask it in different form.

Mr. AUSTIN. I think we can answer it with one question.

Q. There isn't any question, Mr. Etelson, but that
611 307-25 was sold in March?—A. No, there isn't.

Q. And delivered in March?—A. There isn't any question.

Q. And at $32.50?—A. That is right.

Q. Now, with respect to the prices at $39.95, Mr. Etelson, your conclusion that those are above any delivered March price?—A. That is right.

Q. And only those prices which are $34.95, or below, would be proper?—A. That is right.

Q. That would rule out approximately what percentage of these alleged sales after May 18?—A. Here all together are 48, and that would rule out about 19 of them; at least 29 of them at $39.95. Because this item appears again a little bit further down.

Q. Let's come to that.—A. I mean I have included that in there.

Q. The next item, which you have already referred, the 307-3 studio. You say that is identical with 307-25?—A. That is right.

612 Q. The prices at $39.95, you would conclude that is too high?—A. No.

Q. You are talking about 307-3?—A. No.

Q. Would you give the Court what you discovered with respect to that item?—A. The ceiling price on 307-3 is $34.95. The investigator has listed here two sales at $39.99; one to a party which is on here as Dickerson; and another one is Kingman. It is on the guide card at $39.99.

Q. Have you the guide card?—A. Yes, sir.

Q. Will you indicate to the Court where they appear on the guide card?—A. Yes. There are two sales indicated on there; one to Dickerson and one to Kingman at $39.99. Now, in checking back on these sales we found the Dickerson sales check—it isn't "Dickerson," it is "Dixon"—the sale is on the sales check at $29.99. Evidently a mistake by the clerk in transposing the information from the sales check to the guide
613 card. This is the sales check which is alleged to be sold at $39.99. The date on this guide card is July 21, and that is July 20. So the check probably came over there the next day. And this salesman 06, and that is salesman 06. Evidently the clerk transferred this incorrectly. Now, we haven't been able to find the sales check for Kingman, but that sale, according to the information on the exhibit, was made on

the same day. Now, whether or not we can assume the same error happened there is question, I don't know.

Q. In your own mind you are doubtful what the sales price was to Kingman?—A. Yes, because of this other check.

Q. But you are sure that the sales to Dickerson was $29.99?—A. Yes, sir.

Q. And that would not be above the ceiling price?—A. That is right.

Q. One, in other words, is all right, and the other one is a question because you can't check it?—A. That is right.

Q. I offer in evidence the guide card and the sales check as Defendant's Exhibits PPP and QQQ.

614 (The documents were marked "Defendant's Exhibits PPP and QQQ" and received in evidence.)

By Mr. AUSTIN:

Q. There is no question about the fact that a sale to Kingman is entered on the guide card at $39.99?—A. No question about that, just as Dickerson is on the guide card at $39.99.

By Mr. HORSKY:

Q. The next item is a sofa bed at March price, alleged here at $44.99, and sales at $49.95. What did you discover with respect to that item?—A. The investigation; that is, the investigator evidently missed a sale on this guide card at $54.95 in March.

Q. Delivery in March?—A. And there are two checks showing delivery in March at $54.95?

Q. Of this item?—A. Yes, sir. Of this item.

Q. Will you show them to the Court?—A. The item is 837 over 21412, and both of these checks are for that item. This is the guide card for the item and here is one of the sales on here in March at $54.95.

615 Q. I offer these in evidence as Exhibits RRR and SSS.

(The documents were marked "Defendant's Exhibits RRR and SSS" and received in evidence.)

The next item, Mr. Etelson, I notice is studio couch, is that the same?—A. Yes, sir.

Q. The next item is a utility cot. Let me ask you, do cots vary in price depending on their size?—A. Cots vary in price according to size, whereas mattresses do not.

Q. What did you discover with respect to this particular cot in which the highest delivered price is alleged to be $39.95 and the sale at a higher price than that?—A. My investigation didn't disclose anything different than the information on here. I couldn't make a complete investigation because our informa-

tion wasn't complete. Therefore, I think these sales were above the ceiling price.

Q. The next item is a cot at $26.50, and sale at $27.50. Did you discover anything with respect to that?—A. Yes; the highest price on that delivery in March was $26.50, and the sales above that price are evidently above the highest delivered price in March.

616 Q. The next one is a cot, or two cots, 2–6 and 4–0, streamline cots at $24.95, at sales of $34.95. What did you discover with respect to that?—A. Well, 2–6 and 4–0 are two different size cots, and first of all we had no 90 streamline in 1942. This streamline was sold out in October 1941. Now, the sales check for Estell Reif, which is listed in the exhibit here at $24.95, calls for a 2–6 streamline cot, and this was posted to the guide card for a 2–6 Silver King cot, and there have been no sales above $24.95 on the 2–6 size.

Q. On what basis do you come to that conclusion, Mr. Etelson?—A. From the guide card.

Q. Do you have the guide card here?—A. Yes.

Q. Will you take these cards, which you show me, and explain to the Court the basis upon which you conclude there were no sales of the 2–6 cot above $24.95?—A. Well, there are none indicated on here on these guide cards. They don't show any sales above $24.95. The sale to Estell Reif, the sales
617 check for that shows $24.95. And then we found as many of these sales checks as we possibly could, which the investigator listed at $34.95, and all of those that we found are all for the 4-foot size.

Q. Do you have those sales checks?—A. Yes, sir; I have as many of them as we could find.

Q. Let's see if we can tie these up here. The first one on the list is VanHorn, and this is the sales check for VanHorn which shows that it was a 4-foot size. The next one on the list is Leonard, and that is also designated as 4-foot size. The next one on the list is Betts. I don't think we could locate that sales check at the moment. The next one is Mills, and that is for the 4-foot size. The next one is Haney, and that is for the 4-foot size. The next one is Clefwin. I don't see that one here. That is probably one we couldn't find. The next one is Joseph, and that is for the 4-foot size. The next one is Abraham, and this doesn't show the size on it. It is a credit and isn't complete. The next one is Lenonardi, and that is 4-foot. The next one is Altein, and that is 4-foot. The next one is Dawson, and that is 4-foot. The next one is Fiddler, and that is 4-foot. I don't find Palmer, Scott, and Peters; at least, we haven't been able to find the sales check up to this

point. The last one on here is Clealand, and that is a 4-foot cot.

618 The COURT. Some of them say "cot and mattresses" and some "cot and pad."

A. They are the same.

By Mr. AUSTIN:

Q. Do you have a sales check for a 4-foot in March showing the $34.95 price, Mr. Etelson?—A. No, we didn't have the 4-foot size in March. The first shipment came in May. If you will notice, if you have the 4-foot guide card, that indicates 29 pieces received, 14 of the 2–6 size and 15 of the 4-foot size.

Q. Mr. Etelson, it is a fact, is it not, that the size in beds does not make any difference so far as the price is concerned?—A. In beds; that is right.

Q. And that is true with respect to mattresses, is it not?—A. Bed-size mattresses; that is right.

Q. But you say, so far as cots are concerned, the price depends upon the size?—A. Varies according to the size; that is right.

Q. Have you checked to see whether or not these items are on the ceiling price list?—A. Yes. The 2–6 size is not on the ceiling price list. No; neither one of them are on the ceiling price list.

619 Q. Well, this guide for 40 does show when that was first brought in, sold through the month of May and until the first day of June at $24.95, does it not?—A. Yes; it shows that, but, as you will notice here, this is the confirmation which ties up with this guide card, 12914, right here, and 12914 right here. You will notice on this confirmation it calls for 15 in the 2–6 size with a retail of $24.95. You will notice for 15 of the 4-foot size, with the retail of $34.95—you will notice that both of those, both of those 15 and 14, have been placed on the same guide card, although they are two different sizes. They have both been placed on the 4-foot guide card, and though the retails are different on the confirmations, they will be placed with the same retails on the guide card. Evidently a clerical error.

Q. You can't tell from the guide card which one of these were sold?—A. Let me give a different example. Here is a case of Seals which is on this guide card for $24.95. Here is a sales check for Seals which shows that it is a 4-foot size, and was sold at $34.95.

Q. That was not an error?—A. No; this is the right

620 card; this is 4-foot size on the 4-foot guide card. It was entered on the wrong retail.

Q. Is that the same with these others?—A. Have you got one there for Charles? You have got it $24.95 and here it is $34.95.

Q. What about these that are marked "at store" and "to store"?—A. That means a sample was sent over to the store. The whole thing is very confused, evidently by the clerk. But those people who paid $24.95 got a 2–6 cot and those, from the information here, who paid $34.95 got a 4-foot cot.

Q. There would be no way for the investigators, from the guide cards, to be able to determine that, or would they?—A. No not by just looking at the guide card; evidently not. We had to search out what the actual facts are.

Q. In other words it was an error on somebody's part in your store in making this wrong entry on the guide card?—A. Evidently.

By Mr. HORSKY:

Q. How long did it take you, if you remember, to find
621 the correct fact with respect to this particular item?—A. We worked several evenings and part of an afternoon and had to come back to it and had to put somebody searching in the various files. Off and on, I have been on this a long while in order to dig out this information.

Q. To get the true facts as to this one item?—A. Yes, sir.

By Mr. AUSTIN:

Q. I asked Mr. Levinson this, but I don't think he was able to say. How are the sales checks kept in the service bureau?—A. They are not kept strictly alphabetically, all the a's, b's, c's, etc.

Q. They are kept partially alphabetically?—A. That is right.

Q. Now, over what period of time are they kept there?—A. I couldn't answer that either. I could tell you what I understand.

Q. Does anybody know?—A. I imagine the head of the service bureau knows. Mr. Weitzberg probably knows.

Q. Am I wrong on this? Did you not tell me, or Mr. Weitzberg tell me, they were kept from January 1 to January 1?—A. I believe—I am not sure; I am not positive; I
622 would rather not say.

Mr. HORSKY. Mr. Weitzberg says he knows and will be a witness, if you want to postpone that question.

Mr. AUSTIN. All right.

Mr. HORSKY. I offer these in evidence, Your Honor. I think we can put these in one bunch, and call them Defendant's Exhibit Triple T.

(The document was marked "Defendant's Exhibit "TTT" and received in evidence.)

The next item on this exhibit, Mr. Etelson, is a box spring at $19.99, with about nine pages of sales at prices higher than that. Did you investigate that item?—A. Yes, sir.

Q. What did you discover with respect to that? Would you explain to the Court what your investigation would be in respect to all of these differently listed items?—A. 159 designates the factory. 978 designates it as a boxspring from that factory. 3/1 or 4/6 is the size, as in the case of mattresses; and 1020 is merely the cover pattern or cover style.

Q. What did you discover with respect to the delivered price in March on this item?—A. This delivered price on
623 197-159—Here is a sales check, delivered March 20 for $29.95. The only thing that is different is the cover number.

Q. What cover number is this one?—A. 986.

Q. It is described how on this check?—A. 159, 978, 31, boxspring, 986, ticking. Ticking is the cover, $29.95.

Q. How did that differ from the 1020, did you say "ticking"?—A. Just the pattern or color of the ticking.

Q. Do you happen to know the various descriptions of these tickings?—A. No; I do not.

Q I offer this slip in evidence as Defendant's Exhibit UUU.

(The document was marked "Defendant's Exhibit UUU" and received in evidence.)

Your conclusion, Mr. Etelson——

Mr. AUSTIN. I object to his conclusion.

By Mr. HORSKY:

Q What was the result of your investigation with respect to the proper ceiling price of this item for March?—
624 A. $29.95.

Q. Does that take in the bedspring and the boxspring as varyingly described on this exhibit?—A. Yes, sir.

Q. Those are not, apparently, intended to be different?—A. No; only the size and ticking number.

Q. And you say bedsprings sell at the same price regardless of the size?—A. That is the custom.

Q. Likewise, Mattresses?—A. Yes, sir.

Q. And unlike cots?—A. That is right.

By Mr. AUSTIN:

Q. Mr. Etelson, do you have with you the sales check for the sale and delivery on March 2 to Carlos Campbell? That is the one on the left-hand side of the page, which shows $19.99 price?—A. No, I haven't. I could probably get it.

Q. Did you check, in your investigation, to find out whether or not a box spring, 159, 978, 1020, had been sold during
625 March at a higher price than $19.99?—A. No; offhand, I can't say that I know of any. I didn't particular check for 1020.

Q. Mr. Etelson, as far as you know, there weren't any box springs sold, with 1020 springs, at higher price?—A. So far as I know; no.

626 By Mr. AUSTIN:

Q. This item is listed on the ceiling price at $29.95, is it not? It so states on the exhibit.—A. Yes.

Q. Will you look on Page 5 of the Exhibit, 31-i. There appear on that page four entries showing sales at $29.95, is that not correct?—A. That is right.

Q. Which would be above your own admitted ceiling price, would they not?—A. Yes, sir.

Q. That is all.

By Mr. HORSKY:

Q. Will you explain, Mr. Etelson, the custom in the retail trade with respect to this matter of pricing things at $29.95 and $29.99? How do you determine when it is to be 99 and when it is to be 95?—A. Very often it is known a department will establish its so-called price lines either ending in 9 or ending in 5. Sometimes the 99 may be used against 95 in order to differentiate between items for purpose of customer response. There is no real reason for it. It is a matter of pricing within the department. Sometimes, it could be just an oversight by a sales person to charge $14.99, thinking it was some-
627 thing else, which was priced $29.99 against $29.95.

Q. It is a matter in which there could be an error?—A. Yes. There is no real reason.

Q. As a matter of fact, this item would only be four cents too high.—A. That's right.

Q. Does that carry us down to the last page of this Exhibit?—A. Yes; it does.

Q. I see there on the top of that last page, items marked, "Continued from the previous page," with respect to this box spring.—A. That is the same.

Q. On legs same as without legs?—A. No; ordinarily, on legs is a little bit more.

Q. But it is still the same spring. These items referred to are the same springs?—A. Yes, sir.

Q. The next item, the bed.—A. 4-6 bed.

Q. At $79.95; sold at $89.95.—That's right.

Q. What did your investigation reveal in respect to
628 that?—A. My investigation revealed that the sale to Wiley was an outfit, headboard, box spring, on legs, and an inner-spring mattress in the 4-6 size, at $79.95. This was the last piece of a shipment of that particular outfit; and on March 24 we repurchased, and received in April, an outfit consisting of a headboard, a box spring on legs, inner-spring mattress, and bedspread to match. These were priced at $79.95, without the spread, and $89.95 with the spread; and this sale to Tadlock was after the complete outfit came in and was evidently a sale of a complete outfit, including the spread, for $89.95.

By Mr. AUSTIN:

Q. Do you have your sales check for that?—A. For Tadlock?

Q. Yes.—A. I think so.

By Mr. HORSKY:

Q. Was the new shipment that you referred to with the spread given the same style number?—A. Yes. No; I haven't the Tadlock. I think we tried to find it and couldn't.

Q. Do you have any document, Mr. Etelson, to demonstrate the conclusions you have reached with respect to these items as to the difference of material sold and delivered in
629 March, and the item sold to Mr. Tadlock in July?—A. Yes.

Q. Will you show them to the Court and explain.—A. This is confirmation No. 11566, on which there is listed the 6-16 deep-tufted headboard outfit at $79.95. That is the second item on the confirmation.

Q. Is that the first or second purchase?—A. No; that is the first one. And this is the guide card on which that was entered; and here is on the guide card [indicating to Judge] showing that Wiley got the floor sample that cleared out that particular group of merchandise.

Now, this is the next confirmation, 12833, which shows the headboard outfit at $79.95, and then the spreads that go with them, the 4-6 spread, which retailed at $11.95, making the price a little bit higher; but together they sold them at $89.95. That is the confirmation entered on this card for the following sales.

The COURT. Well, I assume this is a good place to stop.

Mr. HORSKY. I offer these in evidence as Defendant's Exhibit VVV.

(The document was marked "Defendant's Exhibit VVV" and received in evidence.)

(Whereupon the Court recessed until Monday, January 25, 1943.)

* * * * *

633 PROCEEDINGS

The COURT. Very well. Does anybody know just where we quit the other day?

Mr. GORDON. I think Mr. Horsky does. He is the scorekeeper for our side.

Mr. HORSKY. Your Honor will recall we were going over Plaintiff's Exhibit, the large exhibit in Department 6. I don't recall the number. It was Plaintiff's Exhibit 31.

LOUIS ETELSON, having been previously sworn, resumed the stand, was examined, and testified as follows:

Direct examination by Mr. HORSKY:

Q. Mr. Etelson, when we closed on Wednesday I believe you had finished your explanation of the next to the last item on Plaintiff's Exhibit 35, the bed, $79.95.—A. Yes, sir.

Q. Have you made an examination of the next item, the last one on that exhibit; the dual maple bed at $59.55?—A. Yes, sir.

Q. And what was the result of your investigation?—A. The result of my investigation was, first, that the price which the investigator put down here as $59.55, the price in March, is incorrect. That should be $52.50.

634 Q. Do you have the sales check?—A. Yes; I do.

Q. And that indicates the sale at $52.50?—A. Yes, sir.

Mr. HORSKY. I offer this in evidence, Your Honor, as Defendant's Exhibit WWW.

The COURT. What is that?

Mr. HORSKY. That is the ticket.

The COURT. What date?

Mr. HORSKY. March 14.

(The document was marked "Defendant's Exhibit WWW" and received in evidence.)

By Mr. HORSKY:

Q. What did you discover, Mr. Etelson, with respect to the sales at $59.55?—A. This sale to Wall was made in February but delivered in March. There were no sales made in March, and the sales after that were at $59.55.

Q. Your conclusion is those are incorrect?—A. Yes, sir.

Q. Mr. Etelson, did you make a further examination of these three items to which Mr. Austin called your attention yesterday, $10.20 bed spring at which the ceiling price is listed here at

$19.99, and the sale was $22.99? Just so the Court will understand the purport of my question, may I ask you what was the highest price in March for that item that you testified
635 to yesterday?—A. $29.95.

Mr. AUSTIN. I object to that, Your Honor. I don't think he testified to that. Is that 1020?

Mr. HORSKY. 1020.

Mr. AUSTIN. That isn't what he testified to.

Mr. HORSKY. I will withdraw that question, Your Honor, and try and state it in a manner which will not be objectionable to Mr. Austin.

By Mr. HORSKY:

Q. Will you state, Mr. Etelson, what you discovered with respect to these sales of $29.95 on Page 9 of Plaintiff's Exhibit 31?—A. Yes. I checked further on those, and I haven't been able to find—there are four of them here. I haven't been able to find all four sales checks, but I have found the one here for Thomas and Reid, and I have a sales tissue there for another one. I haven't been able to find the fourth one. These sales checks on Thomas and Reid show that the sales were at $22.95.

Q. Although they are listed at $29.99?—A. They are listed at $29.99 on the guide card here.

Q. But the tissues, the sales checks, are at a different price than those noted on the guide card?—A. That is right, sir.

Mr. HORSKY. I offer these in evidence, Your Honor, as
636 Defendant's Exhibits XXX and YYY.

(The documents were marked "Defendant's Exhibits XXX and YYY" and received in evidence.)

A. There is a third one there for which we have the sales tissue.

By Mr. HORSKY:

Q. Is it this, Mr. Etelson?—A. No; this isn't the one. We have only been able to find two of the four.

Q. So with respect to two, the price at which it was actually sold is $22.95 rather than $29.99?—A. That is right.

Q. And you have been unable to discover what the other two were?—A. I haven't been able to find the sales check on the other two.

Q. I notice they were all sold on the same day; is that correct?—A. Yes, sir; that is correct.

Q. Mr. Etelson, have you made an investigation of Plaintiff's Exhibit 32? I hand you Plaintiff's Exhibit 32 and ask you if you investigated the first item on that exhibit, which

indicates a utility cot sold in March, delivered in March, at $39.95, listed on the ceiling at $39.99, and sold in September at $44.95 and $49.95?—A. Well, this item, Mr. Horsky, is a complete duplicate of Item 12 in Exhibit 21.

Mr. AUSTIN. You mean 31.

The WITNESS. Sir?

Mr. AUSTIN. You mean a duplicate of 31?

The WITNESS. It is either 31 or 21.

By Mr. HORSKY:

Q. 31. For the purpose of refreshing the Court's recollection, could you indicate briefly what you stated with respect to that item?—A. I stated that the sales above the March price were above ceiling price.

Q. All right. What did you discover with respect to the second item?—A. These are all duplicates of Exhibit 31 also.

Q. And that is the box spring about which you have just testified?—A. That is right. As a matter of fact, some of these names are the ones I have brought out, the two sales checks for Reid and Thomas.

Q. Those sales are actually at $22.99?—A. That is right.

Q. Mr. Etelson, will you go back to Plaintiff's Exhibit 31 for a moment?

Mr. AUSTIN. May I interrogate him now as we did on this other?

Mr. HORSKY. Sure.

Mr. AUSTIN. Go ahead if you want to.

By Mr. HORSKY:

Q. Have you made an examination, Mr. Etelson, to determine whether the items on Plaintiff's Exhibit 31 were actually listed or not in accordance with the statements made on this exhibit? That is the large exhibit.—A. If you will let me have the copy, you——

Q. Will you take them item by item, Mr. Etelson, and state whether the exhibit is correct and if not, where——A. The first one is mattresses 9169, this lot here, and those listed—those are listed on Page 2, Line 10, at $29.50.

Q. Would you indicate to the Court where you find them on that?—A. Yes, sir. It is this item right here, $29.50. Now, I want to carry that just a bit further if I may. The OPA 4, which was originally turned in by the buyer, carries a description. However, evidently the description was omitted by the typist.

Q. Would you indicate to the Court what you are referring

to?—A. Yes. This is the OPA 4, which was the listing used, and this indicates Dream Sleep in innerspring mattress at $29.50, and evidently all the typist put on was innerspring mattress, $29.50. You see, the item just ahead of that
639 is this one here, and the item after that is this one here.

Mr. HORSKY. I offer this in evidence; your Honor, as Defendant's Exhibit ZZZ.

(The document was marked "Defendant's Exhibit ZZZ" and received in evidence.)

(Off the Record.)

The COURT. I see no objection to using numerals, if you prefer.

Mr. HORSKY. The plaintiff has used numerals.

The COURT. The defendant's numerals.

Mr. HORSKY. All right. If that is satisfactory, I will change to 1 from here on out.

The COURT. Defendant's 1.

By Mr. HORSKY:

Q. What was the conclusion with respect to the next item, Mr. Etelson?—A. It applies to all of those 9169 mattresses which go down to—I have here Page 4.

Q. The next item is what?—A. The next item is a mattress, 86630.

Q. That is listed—indicated as listed at $13.95, is that correct?—A. That is right.

Q. The next item is a Sound Sleep mattress indicated
640 as not listed. Is that correct?—A. That is correct.

Q. The next item is listed Sleep Way, indicated as not not listed.—A. No; that is not correct. That is listed on Page 2, Line 14, which lists innerspring mattress at $19.99, and again my notation is that the description Sleep Way was left off by the typist.

Q. Have you the OPA 4 sheet which was prepared by the buyer?—A. Yes, sir; I will try to find it right here. Yes; here it is.

Q. Will you indicate to the Court the items you refer to?—A. Yes, sir. It is listed here on Page 2, Line 14. It says, "Description, innerspring," and the description "Sleep Way" appears there but was evidently not transposed by the typist. This is $19.99.

Q. This is on Exhibit ZZZ, which has been previously introduced in evidence. The next item is a studio, indicated as not listed. Is that correct?—A. This is listed on Page 4, Line 9, as Style 307, description, various covers, at $34.95.

Q. Does this apply, Mr. Etelson, to these various 307's which

are indicated in various covers on this exhibit?—A. Yes, sir; that is right. It goes over to the next page.

641 Q. The next item is a studio at $34.95, 307-3. Is that listed?—A. The same item applies there. In other words, it was listed as 307, various covers, at $34.95.

Q. The next item is a sofa bed, also indicated as not listed. Is that correct?—A. This is listed on Page 4, Line 14, at $47.50.

Q. Will you indicate to the Court where you find that?—A. Yes, sir; this one here.

Q. It is described by style number?—A. Yes, sir.

Q. The next item is a——A. That is that 307-2 again to which we just referred a few minutes ago.

Q. And which you said was listed?—A. Sir? 307, various covers; that is right.

Q. The next item is a utility cot which is indicated as listed; is that right? The next item is also indicated as listed?—A. That is right.

Q. The next item is a cot indicated as not listed; is that correct?—A. That is correct. No; it is listed on Page 1, Line 48, at $34.95, but the size is not given in here.

Q. Would you indicate to the Court the listing to
642 which you are referring?—A. Yes; this one right here.

Q. The next item is the box spring 159978, which is indicated as listed.—A. That is right.

Q. And covers several pages. On the last page of this exhibit, Mr. Etelson, are two beds indicated as not listed. The first one is 649616.—A. That is right.

Q. Is that listed?—A. Yes, sir; that is listed here on Page 1, Line 31, as Style 616 headboard outfit, $89.95.

Q. Will you indicate to the Court where that is?—A. Yes, sir; right here.

Q. The last item is dual bed, also indicated as not listed. Would you state whether that is listed?—A. That is listed on Page 1, Line 50, at $59.95, with the style number given as 608 or 444.

Q. Would you indicate that to the Court.—A. Yes, sir; it is this one right here.

Mr. AUSTIN. You say that is listed 608444?

The WITNESS. Or 444, 608 or 444.

Mr. HORSKY. Your Honor, we had the understanding that Mr. Austin is at liberty to cross-examine. I think he indicated he wishes to ask some questions at this time.

643 The COURT. Yes.

Mr. AUSTIN. Limited to these exhibits.

Mr. HORSKY. To these exhibits; yes.

Cross-examination by Mr. AUSTIN:

Q. Now, Mr. Etelson, I believe you stated yesterday that this sale to W. C. Wiley, as represented in the next to the last item on Plaintiff's Exhibit 31, is a correct representation. In other words, there was such a sale to Mr. Wiley?—A. Yes.

Q. Of this item at that price?—A. As I recall, it was the item without the spread. It was the headboard outfit—is that the item? That is right. That was a headboard outfit without the spread.

Q. In other words, you did have that in March?—A. Sir?

Q. You did have that in March?—A. Yes, sir.

Q. Now then, will you point out again for me where that appears on the ceiling price list?—A. It appears on Line 31, Page 1.

Q. As No. 616—A. That is right.

Q. And I believe the ceiling price there you have at
644 $89.98, is it not?—A. That is right, sir.

Q. Which would be incorrect, would it not?—A. It would be incorrect as the March price; yes, sir; on the headboard outfit without the spread.

Q. Now then, referring to the last item, the sale to Wall.—A. Referring to the sale to Wall?

Q. To Wall. That also is a correct representation, is it not, with the exception of the fact that the figure in the last column on the left-hand side of the page should be $52.50 instead of $59.50?—A. That is right.

Q. That is very obvious, is it not, Mr. Etelson, when you consider the amount of the overcharge as it is listed on the right-hand side of the page?—A. Yes.

Q. In other words, it is an apparent typographical error, is it not?—A. By whoever made up the sheet; that is right.

Q. Now then, did you testify that that was listed on the ceiling price list?

Mr. HORSKY. It is on Page 1.

By Mr. AUSTIN:

Q. Yes; I believe that is right. Will you pick that
645 out?—A. What was that, Page 1, Line 50?

Mr. HORSKY. Yes.

A. Yes, sir.

By Mr. AUSTIN:

Q. Now, I believe under the column "Style," on that page of the ceiling price list, it says "608" or "444."—A. That is right.

Q. Will you distinguish between those two, please, if there is any difference in them; that is 608 item and 444 item.—A. No; I can't distinguish between the two.

Q. Well, then, let me ask you this: Are they identical with 608—is 608 identical with 80–1½?—A. Actually it is 80–1½; 608 is actually the factory number, as you can tell from these guide cards here.

Q. Now, let me ask you this: Is 444 a factory number too?—A. I don't know. No; evidently it is not.

Q. Is that a style number?—A. I don't know that. I mean, I tried to find out what this 608 is, and the item they are referring to and the item that is on that sales check for Wall is the 608 item.

Q. Now, those three sales listed on the right-hand side at some time subsequent to May 18 you admit to be violations, do you not?—A. They were sold above the March price; yes, sir.

646 Q. Now then, Mr. Etelson, referring to the first page of Plaintiff's Exhibit 31, will you read the caption of that exhibit?—A. "Schedule of March Sales which Establish the Base Ceiling Price, and Sales After May 18 Above this Price."

Q. Now then, will you refer to Plaintiff's Exhibit 32.—A. 32?

Q. Yes.—A. Is that this one?

Q. Yes. Now, will you please read the caption of that exhibit?—A. "Schedule of March Sales Which Establish the Base Ceiling Price and Sales After May 18, 1942, Above this Price."

Mr. HORSKY. They are identical, Mr. Austin; is that correct?

Mr. AUSTIN. I think that is correct.

By Mr. AUSTIN:

Q. Now then, Mr. Etelson, it is correct, is it not, that some of the items listed on Schedule 31—pardon me, on Plaintiff's Exhibit 31—show sales above the highest March delivery price?—A. Yes, sir.

Q. It is also a fact, is it not, Mr. Etelson, that the first item on Plaintiff's Exhibit 32 not only represents a sale over the highest March delivery price but, in addition, represents a sale at prices in excess of the Hecht Company's own

647 listed ceiling price?—A. That is true, except I would like to say this in that connection. I have had to qualify that to the extent that we have to have an opportunity to check every one of these sales checks and be able to find every one of these sales checks to be sure that the information on the guide card is accurate, because the information on these exhibits evidently was taken from the guide card; and, as you can see from the stuff we found, these are some differences between the sales check and the guide card.

Q. Are you trying to tell us that your guide cards are not correct?

Mr. GORDON. Had yo finished?

The WITNESS. I don't remember now. I was about to say something else.

Mr. AUSTIN. Just a minute. Let me refresh his recollection so that he can finish if he had something more to say.

(Last answer read by the reporter.)

By Mr. AUSTIN:

Q. And Item 2 on Plaintiff's Exhibit 32 also purports to show sales in excess of the Hecht Company's own established ceiling price, does it not?—A. That is what it shows; but that is not correct, as I have just pointed out, because a couple of sales checks I was able to find and brought in where we have noted sales here from the guide card at $29.99, but the
648 sales check showed that the sales were actually made at $22.99.

Q. That is only with respect to two of the sales, is it not?—A. No, sir. Those are the only two I have been able to find so far.

Q. Those are the only two that you are able to disprove at this time?—A. That is correct.

Mr. AUSTIN. I believe that is all.

Redirect examination by Mr. HORSKY:

Q. I hand you Plaintiff's Exhibit 33, Mr. Etelson, and ask you if you have made an investigation of that exhibit?—A. Yes, sir.

Mr. HORSKY. I will withdraw the exhibit, Your Honor. I believe the other witness has already testified with respect to items on this sheet.

By Mr. HORSKY:

Q. I hand you Plaintiff's Exhibit 34 and ask you if you made an investigation of that exhibit.—A. Yes, sir.

Q. This is entitled "Items Not Sold in March but Sold at a Higher Price After May 18 Than on Submitted Ceiling Price List." The first item across is a sofa bed with the original sale at $39.99 and subsequently sold at that price and $44.95 and 98 and 99 with the ceiling price indicated as $39.95.
649 What did your investigation indicate with respect to that on that item?—A. Well, sofa bed No. 37114 at $39.95 is different from the sofa beds which are listed below those, the other three, at $44.95 and $44.98 and $44.99. The first one is a sofa bed. Those at $39.95 are sofa bed No. 3114, and is designated by the factory as Fenmoore, and the other

three are sofa bed No. 14–3 which are designated by the factory here as Eguinoux.

Q. In other words, the $44.95, the $44.00 price with various cents is a different sofa bed?—A. Yes, sir. I have only been able to find one, a sales check here at $44.95, which is for a sale to Moffatt, and you will notice on here that it is designated here as 3114 No. 3 sofa bed at $44.95, and this is the confirmation which designated a No. 14 sofa bed Fenmoore, and a 14–3 maple with a word under it which is evidently supposed to be Eguinoux.

Q. At different prices?—A. Yes, sir. It retails on here—the No. 14 sofa bed is retailed on this confirmation at $29.99, and the 14–3 is retailed on the confirmation at $39.99.

Q. However, there would still be four cents more than the listed ceiling price on even the 31–14 sofa bed, is that correct?—A. If they were sold at 99, that is right.

Mr. HORSKY. I offer these in evidence, Your Honor, as Defendant's Exhibits 1 and 2.

650 (The documents were marked "Defendant's Exhibits No. 1 and 2" and received in evidence.)

Mr. HORSKY. That is all.

Re-cross-examination by Mr. AUSTIN:

Q. Do you say, Mr. Etelson, that this is not on the ceiling price list, or is on the ceiling price list?—A. Pardon me just a minute. I know at the moment that 14–3 isn't on the ceiling price list. That is right. That is not on the ceiling price list. You have the other one that is on the ceiling price list.

Q. Which is the other one that is on the ceiling price list?—A. You have the $39.95 on the ceiling price list on your own exhibit.

Q. Well, now, to how many of these 31–14 sofa beds does this ceiling price apply?—A. It applies to 31–14. It applies to Style 14.

Q. I am referring to Plaintiff's Exhibit 33, Mr. Etelson. I believe Mr. Levinson testified that these were the same items and those appear to be sofa beds Factory No. 31, Style 14, do they not?—A. Yes, sir.

Q. And he testified that they were both listed as Item 1, Page 1 of the September 10 supplement, your cost of living

651 statement:—A. What is the question?

Q. Well isn't that—are those the same as this item?—A. Well, that is No. 14.

Q. That is right. Well, that is what you were testifying about, weren't you?—A. I said these others are 14–3.

Q. And those are not listed?—A. No; they are not listed.

Q. And both of these are just plain 14?—A. That is right, according to the confirmation. It will show that.

Q. 14–3 is not on the ceiling price list?—A. No; it is not.

Mr. AUSTIN. That is all.

Redirect examination by Mr. HORSKY:

Q. You made the investigation of the next item, Mr. Etelson, the chair bed Style 3770?—A. Yes, sir.

Q. The original sale at $29.95, the same ceiling price, and a subsequent ceiling price of——A. Yes, sir.

Q. What did you discover with respect to that?—A. I discovered in this case that the OPA 7, which was put in by the buyer, established the ceiling against $52.50
652 ceiling price. This is the old OPA 7 form which in my opinion is not very clear, and that is the reason I revised it later on. The typist evidently took the retail of the new item rather than taking the retail of the item against which it was compared.

Mr. AUSTIN. I object to that if the Court please.

By Mr. HORSKY:

Q. Would you indicate to the Court——

Mr. AUSTIN. Just a minute, if the Court please. Let the Court rule.

The COURT. He can answer that one.

By Mr. HORSKY:

Q. Will you indicate to the Court the two items to which you are referring?—A. Yes. The listing was taken from this old sheet here. This is the old OPA form. This is the retail on the new item, but it was compared with this item, and the ceiling price established against this item which is $32.50, but the typist used this as the ceiling price rather than that against which the item is compared. It should be the established ceiling price.

Q. The correct ceiling price should be what?—A. $32.50.

Mr. HORSKY. I will offer that in evidence, your Honor, as Defendant's Exhibit 3.

(The document was marked "Defendant's Exhibit No. 3" and received in evidence.)

653 By Mr. HORSKY:

Q. What did you discover with respect to the sale at $69.75, Mr. Etelson?—A. Well, that is evidently an error by the investigator because there is no $69.75 on the guide cards.

Q. Do you have the guide cards?—A. Yes, sir; I have the guide cards.

Mr. HORSKY. I will offer these in evidence, Your Honor, as Defendant's Exhibits 4, 5, and 6. That is all.

(The documents were marked "Defendant's Exhibits Nos. 4, 5, and 6," and received in evidence.)

Re-cross-examination by Mr. AUSTIN:

Q. This 64770 chair bed is on the ceiling price list, is it not?—A. Yes, sir.

Q. At $29.95?—A. That is right.

Mr. AUSTIN. That is all.

Redirect examination by Mr. HORSKY:

Q. The last item on that exhibit, Mr. Etelson, is Style 76½; Duncan Studio with the ceiling price at $64.50 and sales at $69.95. What did you discover with respect to that item?

654 With respect to that item I found that the ceiling price was established at $69.50, and there have never been any sales above $64.50, and the guide cards indicate no sales at $69.50.

Q. Have you the guide cards?—A. Yes. Now, this business of the original here, $69.95, of course, they took from the confirmation.

Q. May I have the guide cards first?—A. Yes.

Mr. HORSKY. I offer these in evidence, Your Honor, as Plaintiff's Exhibits 7, 8, and 9. Defendant's Exhibits.

(The documents were marked "Defendant's Exhibits Nos. 7, 8 and 9" and received in evidence.)

By Mr. HORSKY:

Q. Now, what did you discover from the confirmation?—A. That the confirmation was marked $69.95, but it was a mistake, and it was reduced to $64.50 before the goods were offered for sale.

Q. Have you the confirmation?—A. No. I haven't, but you will notice on the guide card I think it indicates there was a markdown taken to $64.50 and there have been no sales above $64.50.

Q. Would you explain from these guide cards, Mr. Etelson, where you find the mark-down?—A. Yes, right here. This is the price at which the——

655 Q. Show the Court, please.—A. I am sorry. Right here is the price at which the goods is marked, $64.50, see, retail of merchandise, and down here is the original retail, $69.95, and then they took a mark-down to $64.50 as indicated there.

Q. Mr. Etelson, on these guide cards I notice several items written in ink with various numbers rather than a name in

the Customer's Order Number at $69.95. What do those indicate?—A. Those are the confirmation numbers and the goods received, and that is the retail taken from the confirmation. It is only a matter of record.

Q. Those are not sales?—A. No, no; they are not sales.

Q. Mr. Etelson, I notice these guide cards have a stamp on them in green ink stating, "Selling Price, $64.50." Would you indicate what the purpose of that notation is?—A. Yes. This has been put on so that in the event that a sale should be made by mistake by a salesman, or any other incorrect writing above the ceiling price, that when the sales check gets to the warehouse to be checked off against the guide card it will be caught by the girl who checks the sale off against the guide card, and it will be stopped immediately so that the order can be corrected.

Q. When was that stamp first put on the guide card?—
656 A. This has been put on since the investigation. I mean this has been placed on there. We have added it to our system in order to try to overcome some of these errors made on the floor.

Q. That was prior to the time this action was committed?—A. Oh, yes.

Q. That is a system that is used throughout the furniture departments now?—A. It has been placed in three of the departments, I believe, and we are in the process of putting it in the fourth one. I mean it is a matter of time of getting it on the cards properly.

Mr. HORSKY. I think that is all with this witness, your Honor.

Re-cross-examination by Mr. AUSTIN:

Q. Now, going back, Mr. Etelson, I believe you stated that at the time you were preparing these lists that you have from seven to eight people in your Price Control Office there in the store, is that right, when you were preparing your base period ceiling price list?—A. Yes.

Q. And I believe you also stated that the primary responsibility for compliance within the store was on the buyers?—A. That is right.

657 Q. Is that not right?—A. That is right.

Q. Now, did anybody else in the store have any responsibility for compliance?—A. Yes, I have responsibility.

Q. You have responsibility?—A. People on my staff have responsibility.

Q. And what was the nature of your responsibility?—A. To keep the buyers informed, to keep the entire organization in-

formed as to regulations, to educate them as to the manner of compliance with the regulations, to advise them, to spot check, to try to keep the whole thing tied up and knit together so that everybody would be—everything would be proper.

Q. Is it your responsibility to check these ceiling prices and OPA 4's they submitted to you?—A. It was our responsibility to spot check them, yes.

Q. Price Regulation 178, Mr. Etelson, did not apply to any of the departments that were investigated, did it?—A. No.

Q. Now, I believe you stated that ever since this Price Control Office was initiated in the store that it had an unlimited budget, is that right?—A. Yes.

Q. And you had authority to employ any people that you thought you needed that you could get?—A. That is right.

658 Q. Now, Mr. Etelson, at the time you were on your vacation how many people were there in the Price Control Office of the Hecht Company?—A. I would say offhand that there were about four people in the office. That is the best of my recollection at the moment, and we were using the services of an outside comptometer organization. That is besides the shoppers who were doing checking and so forth.

Q. Now then, Mr. Etelson, referring to Plaintiff's Exhibit 6, I believe you testified that none of those items appeared on the ceiling price list for that department. That is correct is it?—A. No, I don't remember testifying to that.

Q. I beg your pardon. Now, Mr. Etelson, I believe that Mr. Horsky in examining you with respect to this exhibit asked you this question: "Do you find any of these items actually listed?" And your answer was, "No." Then Mr. Horsky said, "They are not listed?" Is that not correct?—A. (Witness nods head.)

Mr. HORSKY. Would you answer, Mr. Etelson, so the reporter can indicate what you mean?—A. Yes.

By Mr. AUSTIN:

659 Q. That is correct?—A. I don't recall, but if it is in there, I am sure it is correct.

Q. And further stated with respect to Defendant's Exhibit 7, Mr. Etelson, that there were no mistakes in that exhibit, did you not?—A. Well, this was copied from our—directly from our confirmation. That is right.

Q. There are no mistakes in it?—A. That is right.

Q. Now then, referring to Plaintiff's Exhibit 8—and will you hand that to the witness, please, Mr. Clerk—I believe you testified, Mr. Etelson, that the first three items listed on Page 1

of Exhibit 8, Plaintiff's Exhibit 8, were sold in March for $22.50, and that the maximum price for those items is $22.00.—A. You will have to let me get my information on this. I'd have to refer back to my sheets. Is that all right?

Q. Well, I am asking you if that is not what you testified to.—A. Well, if it is in there, if it is in the evidence, I testified to it, but at that time I was looking at my sheets here, and if I have to retestify to that, I'd rather look at my sheets again.

The COURT. You may do that.

Mr. HORSKY. Do you recall the question, Mr. Etelson?

The WITNESS. Yes; I recall the question.

A. I must have said that the correct price was based
660 on—was $22.50.

By Mr. AUSTIN:

Q. And you said also that the fact is that these suits sold for $22.50 in March and were marked up in April to equalize with another similar garment, is that not correct?—A. I said that the item was marked up from $22.50 to $25.00, and the confirmation was marked——

Q. Well, did——

Mr. GORDON. Let him finish. He was right in the middle of a word.

Mr. AUSTIN. Just a minute. I am going to present him with what he said and ask if that isn't the fact.

Mr. GORDON. If the Court please, I object to interrupting the witness right in the middle of a sentence.

The COURT. Let him finish his answer.

A. According to my record here the confirmation for the merchandise was marked—the mark-up was taken on April 16 from $22.50 to $25.00, and the notation on the mark-up sheet says moth proof room warehouse.

Mr. AUSTIN. Now, I move that the answer be stricken as not responsive to the question. Please read the original question.

The COURT. The question may be put again.

By Mr. AUSTIN:

Q. Now, I hand you the record, Mr. Etelson, on Page
661 53 and ask you if you did not give this answer to this question. "Q. Not what the buyer did or did not want to do but what you found out with respect to this. A. The fact is that these suits sold for $22.50 in March and were marked up in April to equalize with another similar garment."—A. If it is in there, I probably said it.

662 Q. Now this confirmation, Plaintiff's Exhibit——

Mr. JAMES. Defendant's.

The COURT. Defendant's.

Q. Yes, Defendant's Exhibit II covers these three items, does it not, Mr. Etelson?—A. That is right.

Q. And that confirmation, being the same exhibit, II, also covers the succeeding 12 items, does it not?—A. Yes.

Q. Can you tell us, Mr. Etelson, the difference between the first three items and the succeeding 12 items on page 1 of the Plaintiff's Exhibit 8, except that there are a different number of pieces?—A. They are a different retail.

Q. That is right. Now as to the suit itself, can you tell us what the difference is?—A. Are you talking now about—you mentioned yourself that there are a different number of pieces.

Q. That is right. Is there any other difference?—A. Well, the first two, 6833 and 6835 were 65 percent wool, 25 percent reprocessed wool and 9 percent Mohair. Style No. 7932 is all wool. Style Nos. 7902, 7804, and 7903 are 50 percent
663 wool and 50 percent reprocessed wool. Style Nos. 7924, 7933, 7927, 7925, 7969, 7917, 7912, 6915, and 8110 are all wool. 7105 is 65 percent reprocessed wool and 35 percent cotton. I think you will find that information on the invoices covering that merchandise.

Q. All right. Now, then, Mr. Etelson, you stated, did you not, that the conclusion from your investigation was that these 12 items were not sold in March. That is correct, is it not? I refer you to the record in questions and answers on page 54.—A. That is right.

Q. Now will you refer again, Mr. Etelson, to Defendant's Exhibit II.

(Clerk hands Exhibit II to Mr. Etelson.)

How many of the first three items does that confirmation show were purchased?—A. It shows that 39 were purchased and 37 came in.

Q. That 37 were received by the store, is that right?—A. Yes, sir; that is right.

Q. And it shows how many of the succeeding 12 items were received by the store?—A. One hundred and five.

Q. Now those suits were marked up on April 15th,
664 were they not, Mr. Etelson?—A. That is right.

Q. Now you say on page 54 that 22 of these suits were probably bought up to fill the Easter rush. You mean 22 of those 12 suits, do you not—of those 12 items?—A. Yes; 22 of 105.

Q. Was that before or after April 15th?—A. Before April 15th.

Q. How far before?—A. Well, I estimate that it was between April 1st and 15th.

Q. That is just your estimation, though.—A. That is right.

Q. Do you know when Easter was last year—its date in the month of April or March?—A. I have forgotten now.

Q. How long does this Easter buying period extend comparatively prior to the Easter date, Mr. Etelson?—A. How long does it extend prior to the Easter date?

Q. Yes.—A. Three or four weeks.

Q. Three or four weeks.?—A. Yes; the main part concentrated in two weeks.

665 Q. Mainly concentrated in two weeks.—A. I say most of it.

Q. Well now, the mark-up with respect to these suits—both those in the first three items and the succeeding 12 were on the same day, were they not—the same mark-up?—A. That is right.

Q. April 15th?—A. Yes, sir.

Q. Now then, you say you don't know when Easter was last year.—A. I don't remember right at this moment, no.

Q. Well, would it interest you to know that it was on April 5th?—A. All right.

Q. Now if that is a fact and the Easter buying, you say, runs for a period of three or four weeks prior to Easter, concentrated in a period of two weeks prior to Easter, will you still say that none of these suits were sold in March—that is, of the succeeding 12 items after the first three?—A. I will say so. I mean, it is an estimate on my part—an assumption on my part.

Q. The fact is that you don't know anything about it, is it not, Mr. Etelson?—A. I can only take it from the evidence that I have.

666 Q. Yes. Now then, the mark-up for these items, Mr. Etelson, which is defendant's Exhibit JJ, shows that there were 83 of those suits marked up on April 15th, does it not?—A. Yes, sir.

Q. In other words, there were 22 suits sold some time prior to this date, and you have no record of their ever being marked up prior to this time?

(Witness shakes his head in the negative.)

Mr. HORSKY. You will have to answer Mr. Etelson, or the reporter won't get it.

The WITNESS. No!

By Mr. AUSTIN:

Q. In other words, on that basis you have come to the conclusion that none of these suits were sold in March, is that right?—A. That is right.

Q. But of the first three items—some of these suits were sold in March, is that right?—A. Actually I don't know.

Q. Well then you want the Court to believe what you say now or what you said on direct examination when you said that "The fact is that these suits were sold for $22.50 in March."?—A. No; I can only tell you what the facts here are.

667

Q. Well, what I want to know from you, Mr. Etelson, is what you want the Court to believe—what you are saying now or what you said on this direct examination.

Mr. GORDON. He is trying to tell you what the facts are. That was his answer to your question. He wants the Court to believe the facts. Give him a chance and he will tell you.

Mr. AUSTIN. Well, he stated the facts to be two different things, Mr. Gordon.

The COURT. Well, let us hear his complete answer.

A. The confirmation of this merchandise is marked "Fall." They were received on January 30th and stored in the warehouse. On April 15th we marked up 83 suits from $22.50 to $25. On this the reason given for the mark-up is to equalize, and at the bottom of the sheet there is a notation "Moth Proof Room Warehouse."

Q. I will still ask the same question. Do you want the Court to believe what you say now or what you said on direct examination?—A. I want the Court to believe whatever I say and the facts as well as I knew them, and I am telling you and telling the Court what I have here.

668

Q. At that time you said these suits were sold in March. I want to know whether that is the truth or not.—A. Evidently they were not sold in March.

Q. You are now changing your opinion on that, is that right?—A. I am giving you my opinion from the facts I have here.

The COURT. We will take a five-minute recess.

(A five-minute recess was had.)

The COURT. Well, Mr. Austin, you may resume your examination.

By Mr. AUSTIN:

Q. Now, I believe you said, Mr. Etelson, that you do not know, as a matter of fact, whether any of these suits in the 12 items on page 1 of Plaintiff's Exhibit 8 were sold in March or not.—A. No; I can only repeat that 83 were marked up in the Moth Proof Room on April 15th.

Q. And it follows, then, that you don't know either that

they were not offered for sale in March.—A. Well, I know that those 83 were not. Now what the other 22 were—I cannot tell you exactly what happened—whether they came over the 1st of April or the 10th of April.

669 Q. They might have been sold in March for all you know, might they not, Mr. Etelson?—A. They could have been; yes.

Q. Yes. Now then, Mr. Etelson, I believe you stated that those suits, referring again to the 12 items on page 1 of Plaintiff's Exhibit 8, here on line 13 of page 1 in the ceiling price list for that department—they are in the ceiling price list, is that correct?—A. You say I said that?

Q. Yes; I am asking you if you did not say that—if that is not a fact?—A. I did not say that.

Q. You did not say that?—A. No.

Q. You say they are not on the ceiling price list.—A. May I see that. May I see the ceiling price list, please? You are talking about these 12 items now?

Q. Yes; that is right.—A. Not the first three.

Q. No, the 12.—A. No, I did not say that.

Q. You did not say that?—A. No.

670 Mr. GORDON. Are you referring to some particular place in the record where he is supposed to have said that, Mr. Austin? (No response.)

Is the answer no?

Mr. AUSTIN. To the question you asked me?

Mr. GORDON. Yes.

Mr. AUSTIN. I did not answer it.

Mr. GORDON. Well, if the witness has said something——

Mr. AUSTIN. Just a moment.

The COURT. If Mr. Austin does not know where it is, I would prefer that he did not take the time in finding it.

Mr. GORDON. We have found innumerable mistakes in the record. You all know that, and if there is something different in the record—something that seems to be different from what he is saying now, we will have it straightened out.

Mr. AUSTIN. I will withdraw the question, if the Court please.

By Mr. AUSTIN:

Q. Do you know whether or not these suits are on the base period statement, Mr. Etelson?—A. I don't think they are.

Q. You do not think they are?—A. No; I don't think
671 so. At least, I have not anything on my record that indicates that they are.

Q. Now I believe, Mr. Etelson, you stated that these suits

were compared with Picarrello and Singer garments, Nos. 8706, 8707, 8708, and 8709.—A. That is right.

Q. Will you point out to us where those suits are on the base period statement?—A. Right here—page 1, line 5.

Q. Page 1, line 5.—A. Yes.

Q. That says, "Student's suits, 26, 24, 8700 under-style, 10 way all wool, $29.75, is that right?—A. That is right.

Q. Now is that 8700 style the same as 8706?—A. That is the style range—8700 style range.

Q. Now will you answer the question, please? Is 8700 the same as 8706?—A. In our opinion it is; yes.

Q. In other words, all garments in that range are the same, is that right?—A. That is right.

Q. Now then, Mr. Etelson, I believe you stated that fleece school coats, style No. 5524, 5521, 5522, 5523, are
672 on the base period list.—A. Pardon me. Where is that on your exhibit? What numbers were those?

Q. 5524—fleece school coats.—A. Yes; I see it. Yes, sir. What was the question?

Q. I believe you stated they were on the base period list.—A. That is right.

Q. Where did you find those? This is it right here. It is on page 2, line 32. Page 2, line 32.—A. That is right. I would rather get my original book. I can see it more clearly.

Q. Now is your explanation for this item or these items the same as for the prior one—in other words, that they are on the 350 range and therefore the same?—A. That is right.

Q. Well now, referring to the item right below that, Mr. Etelson, in line 33.—A. Yes.

Q. I believe that is described as 5500—3400?—A. Yes; I see that.

Q. At $13.95.—A. Yes.

Q. Do you know what the difference is between
673 those?—A. No; I don't right now. I have not investigated that particular item.

Q. Mr. Rose is probably about the only person that does know, isn't he?—A. Probably, unless we check into it and find just what it was on the OPA 4 and on the invoices.

Q. Now then, Mr. Etelson, referring to the second item below the group that we are now talking about, Louis Saffer.—A. Uh-huh.

Q. I believe you stated that that is not on the list. Is that not right? By that I mean on the base period list.—A. I would say that is probably right; yes. I have no notation that it is on here.

Q. Well now, let me recall to you your testimony about that. I asked this question:

"Q. You are talking about 6404, aren't you?

"A. No; 6400.

"Q. 6400?

"A. That is right.

"Q. It is not on the ceiling price list, is it?

"A. No."

674 That is correct, isn't it?—A. I say I have no indication here that it is on the ceiling price list—6400.

Q. Well, you have the ceiling price there before you, don't you?—A. Yes.

Q. Well, will you look and see whether it is there or not?—A. No; I do not see it on here.

Q. I believe you further stated that the $27.50 ceiling price that is on Plaintiff's Exhibit 8 as referring to that Louis Saffer suit applies to 6402, 6403, and 6404, line 7, on page 1 of the ceiling price list, is that correct?—A. That is right.

Q. Now, aren't the items in the 6400 range the same as items in the 5500 range and the 8700 range, or do you know?—A. Well, not necessarily, because it is possible that sometimes the size enters into it, too. In other words, it could be a range, but in a different size.

Q. Well, now, you don't know the size of this Louis Saffer suit, do you?—A. 6400.

Q. Yes.—A. No; I don't.

Q. And do you know the size of these students' suits listed as 6402, 6403, and 6404 on the ceiling base period

675 list?—A. I will go back a minute—I am sorry. On this 6400—I have the confirmation here and the confirmation has sizes 33 to 38 and it is a one pants suit.

Q. Mr. Etelson, will you tell us just what a husky suit is?—A. What a what is?

Q. A husky suit.—A. Yes; a husky suit is for the heavier boy. They are in sizes to take care of the youngster who is heavier than the average.

Q. It does not describe the suit except that it refers to size, is that it?—A. Well, it refers to the size in the suit. It does not describe the fabric in the suit, but there are sizes that come in regular sizes and the same sizes of our husky. It is made larger.

Q. Well, is it a long-pants suit or short-pants suit?—A. Large.

Q. Husky, or both?—A. I know it is in the long pants. Whether it is in long——.

Q. You don't know whether it is in the long or not?—A. No.

Q. Now, you have your ceiling base period list there,
676 Mr. Etelson.—A. Yes.

Q. Will you please point out where the Weinert Katz suits, style numbers 5516–6218 appear? There; yes.—A. There is one in here at $17.95.

Q. Where is that, please?—A. That is a cadet suit. You are talking now about what?

Q. I am talking about the Weinert Katz Big Fellow suits. What is a Big Fellow suit?—A. You have got me there.

Q. Is that a trade name?—A. It is a larger suit. I really do not know what the description means.

Q. You do not. Now in the previous question, point out where those style numbers 5516 and 6218 appear.—A. The style numbers do not appear in the ceiling price list.

Q. Do you mean for that reason you cannot pick them out?—A. I cannot; no.

Q. In other words you do not know whether they are on the ceiling price list or not?—A. Well, there is a Weinert
677 and Katz suit here at $17.95.

Q. But you do not know what suit that is?—A. No; I do not know whether it is that suit.

Q. Now is 35 your code number for Weinert and Katz?—A. That is right.

Q. Now referring to your ceiling price-list.

Mr. HORSKY. What page, Mr. Austin?

Mr. AUSTIN. Page 1.

Mr. HORSKY. Page 1?

Mr. AUSTIN. I think it really is page 3. It is numbered 1, but I think it really is page 3.

Mr. HORSKY. What is the first item on it so I can identify it?

Mr. AUSTIN. Students' suits.

The WITNESS. That is page 1 of the supplementary, or 4 otherwise.

Mr. HORSKY. I have it.

By Mr. AUSTIN:

Q. Now down toward the bottom of the page under the description "Used, long trousers suits" there is a suit there No. 35, is there not?—A. Yes, sir.

Q. And that is a Weinert Katz manufacture, is it not?—A. Yes.

678 Q. And that is $18.95, is it not—listed ceiling price?—A. Yes.

Mr. GORDON. Seventeen.

The WITNESS. There are two above it—$17.95.

Mr. HORSKY. There is one of these, that is right.

Mr. AUSTIN. One at $17.95 and one at $18.95.

The WITNESS. That is right.

By Mr. AUSTIN:

Q. Do you know, as a matter of fact, that that $18.95 is not the one referred to in the Plaintiff's Exhibit?—A. I have not been able to find invoices for any of those Weinert and Katz manufactures, though I have looked, and I know here that we have a confirmation for Weinert and Katz suits at $18.95 with a retail on it at $18.95, and I must assume there that they are two different suits—one at $17.95 and one at $18.95.

Q. But you do not know which one refers to which?—A. No; because I cannot find the invoices.

Q. Then your statement here that it is not listed at $18.95 is a statement about which you have no direct knowledge?—A. I beg your pardon. I did not understand that.

Q. I am referring to the record.

Mr. GORDON. What page?

679 Q. Page 65 and speaking with reference to Weinert and Katz Big Fellow suits. You say—Mr. Horsky says: "Then the $18.95 on the exhibit is an erroneous attribution of that ceiling price to this suit—on this suit."—A. That is right.

Q. You said that is right.—A. It is not listed at $18.95, that is right, because we found the other suits in stock at $18.95 and marked up—marked at $18.95.

Q. But so far as it being on the ceiling price-list——A. There are no style numbers on there.

Q. So therefore you cannot identify the suits.—A. Not from the ceiling prices.

Q. And you do not know whether it is on the ceiling price-list or not.—A. I know there are two Weinert Katz suits on here, one at $17.95 and one at $18.95.

Q. Now then, Mr. Etelson, referring to the next item—no. the second, following item on the Plaintiff's Exhibit 8—do you have the list there?—A. What was the item?

Q. Adler pants.—A. Yes.

Q. Did you have one of the companies, OPA 7 forms

680 for the comparison made in establishing the ceiling price of those slacks?—A. It was made out under the regulation. Yes, it was put in under Regulation 177 which is the men's and boys' clothing regulation.

Q. Now you said you compared those with slacks from the Rugby Manufacturing Company.—A. Yes.

Q. Will you point out where the slacks from the Company appear on the ceiling price-list?—A. It is on page 2, the fourth item from the bottom.

Q. And the code number is 25?—A. Yes, sir.

Q. Now then, will you point out, Mr. Etelson, where these Adler slacks appear on either the August or September supplements to the department's cost-of-living statement?—A. They appear on—I don't know whether you would have it listed as page 2 or page 5.

Q. Is that the August 10 supplement?—A. No; this was filed under 177, which is the men's and boys' tailored clothing order which came out after the GMPR.

Q. I undertsand that, but it is also a cost-of-living
681 item.—A. Well, we filed it as a cost-of-living item.

Q. It did not come into the store until the 6th of July, is that right?—A. Yes, sir.

Q. Therefore it wouldn't be on the list that you filed on the 1st of July.—A. That is right.

Q. Your cost-of-living statement, original. It would appear on a supplement.—A. This is a supplement.

Q. All right. Now where is it, please.—A. I say either your page 2 or page 5, about line 8.

Mr. HORSKY. What is the code number for Adler?

The WITNESS. Two wool tweed zipper, $5.99.

By Mr. AUSTIN:

Q. Now is that the August supplement?—A. No, this, I think, was filed in July—either July or August, and I do not remember the date on which it was filed. You see, July 30th I have a date on here so it was filed either July or August.

Q. In other words, this is neither the original cost-of-living list nor the supplement due August 10th, but something that was found in between, is that it?—A. This is a supple-
682 ment under Maximum Price Regulation 177. It is another regulation which covered men's and boys' tailored clothing and required that it be filed under that regulation, and this was filed under that.

Q. And you find that is, as you say, on lines 7 and 8?—A. Three, 6—8, yes.

Q. Described as wool tweed zipper, $5.99.—A. And the article is described as "Youths' and students' slacks."

Q. Yes. Now, Mr. Etelson, referring to the Wearbest Company's camel coats which appear on the second page of Plaintiff's Exhibit 8.—A. Wearbest camel coats.

Q. With what coat did you compare that coat to establish its maximum price?—A. They were compared with covert topcoats, style No. 6500.

Q. Where did you find those on the base period list?—A. Where did I find them on what?

Q. On the base period list. Well, I think I have it here. I will ask you if it is not line 25 on the second page.—A. Page 2? That is right.

Q. You have an OPA 7 for that. Did you have it at
683 that time?—A. No; this is on the 4. This is on the OPA 4, the original list.

Q. This is on the original? Oh, I beg your pardon. Did you have an OPA 7 for the Wearbest?—A. I would say no.

Q. You did not have.—A. No; I don't have any notation of it.

Q. All right. Well, all those OPA 7's which you had at that time were in your possession, were they not, Mr. Etelson?—A. Yes, sir.

Q. And digressing a bit, those were kept in separate files for each department, were they not?—A. Yes, sir.

Q. Now, Mr. Etelson, referring again to Plaintiff's Exhibit 8 on the second page thereof, the item described as No. 4417, Kraft, Barth, double-breasted, 2 golf long—can you find that on your base period list—your base period statement?—A. On the base period statement, page 1, the sixth item from the bottom. There are husky suits, code No. 2619, style 4400, full line 3-piece tweed, $17.95. 4417 is a husky suit.

Q. 44 17 is a husky suit.—A. Yes, sir.

684 Q. Now 19 is the Kraft Barth code number, is it?—A. Yes, sir.

Q. Now will you refer to what I believe is your page 3?—A. Page 3?

Q. I think it is your page 3. Now I refer you to the fourth item from the bottom. There is the husky suit, 1 golf, one long, Jefferson fabric, $18.95. Can you identify that suit?—A. What do you mean, "Can you identify it?"

Q. Well, strike the question. Can you distinguish that from the suits which you just described in the 4400 range?—A. No; except that I believe this fabric is different from the other fabric.

Q. But you don't know that.—A. No; I wouldn't say.

Q. Now referring to Plaintiff's Exhibit 8, Mr. Etelson, do you know what D. B. two golf long means?—A. Double-breasted—pardon me, what are you looking at?

Q. I am looking at this 44 17.—A. It is on here. D. B. as double-breasted and two golf long. Two golf and a
685 long would ordinarily mean that it has two pairs of knickers and a long pair of trousers. That is what this would indicate. Now on the invoice and on the confirmation it calls for a long and golf.

Q. Well, don't you think that is what it means—two pair of pants; one golf and one long?—A. Do I know what this on your exhibit means?

Q. Yes.—A. I do not know what this means on your exhibit; no.

Q. You don't?—A. No.

Q. Did you check these back against the confirmations?—A. I have the confirmation here.

Q. Doesn't that appear on the confirmation?—A. No; it does not. It appears as D. B. long and golf husky.

Q. D. B. long and golf husky?—A. That is right.

Q. Now then, Mr. Etelson, referring to the last item on Plaintiff's Exhibit 8, I believe you found that on confirmation 47608 an item numbered T 12516, did you not?—A. Yes, sir.

Q. Picarrello and Singer?—A. Yes, sir.

686 Q. Now that is described as Covert 3 piece C. V. P. That means coat, vest, and pants?—A. That is what you have on here, but I do not think it is described that way on the confirmation. I think the confirmation is in evidence.

Mr. HORSKY. Yes; I put it in evidence.

Mr. AUSTIN. That is Defendant's Exhibit either WW or XX.

The WITNESS. T 12 516 is on here as single-breasted Covert cadet, half line.

Mr. AUSTIN. And V 8516

The WITNESS. V 8516 is C. V. P.; that is right.

By Mr. AUSTIN:

Q. Now what is the code number, Mr. Etelson, for Picarrello and Singer—what is the store's code number?—A. Twenty-four.

Q. Now will you look on your page 4 on your ninth item from the bottom?—A. Yes.

Q. That is an item from Picarrello and Singer, is it not?—A. Yes, sir.

687 Q. And it is described as a Covert piece, 3 piece, C. V. P., is it not?—A. That is right.

Q. And the price is $16.95?—A. That is right.

Q. Now, Mr. Clerk, will you hand the defendant—uh, hand Mr. Etelson Defendant's Exhibits LL and MM.

The COURT. Suppose we take that up after recess.

(Recess for lunch.)

688 (The Court reconvened at 1:40 p. m.)

The COURT. Now you may proceed, if you will. You were just calling for plaintiff's No. 9 when we recessed.

CLERK. Didn't you ask for two exhibits?

By Mr. AUSTIN:

Q. I hand you, Mr. Etelson, what has been identified and introduced into evidence as Defendants' Exhibit LL and MM. I believe the confirmation is Defendant's Exhibit LL, is it not?—A. Yes, sir.

Q. Shows a retail price at $25 for 6404, is that right?—A. 6404; yes, sir.

The COURT. What have you now, No. 9? What exhibits have you?

Mr. AUSTIN. Defendants' LL and MM.

By Mr. AUSTIN:

Q. And the invoice which you hold there, Defendants' Exhibit MM, indicates a retail of 27.50?—A. Yes, sir.

Q. And is that for No. 6404?—A. This invoice is for No. 6404, yes, sir, but this invoice does not belong with this confirmation.

Q. It does not belong with that confirmation?—A. No, sir.

689 Q. Do you have the invoice which belongs with that confirmation?—A. You say do I have it?

Q. Yes.—A. No; I do not have the invoice right now unless I handed it in before.

Q. All right, that is all, Mr. Etelson, on that. Perhaps I asked you this question, but to make sure that the record is clear, where do you keep the store's OPA 7 forms now after they have been filled out by the buyer and sent to your office?—A. After they have been filled out by the buyer and after the merchandise has been received and the invoice has been received in the invoice office, the sevens are sent to my office and kept there.

Q. Your office is their ultimate destination?—A. That is right.

Q. And you keep them on file there?—A. That is right.

Q. Has that always been the way they have been handled?—A. Yes, sir.

Q. I believe that you stated, Mr. Etelson, that under your new system it is impossible for merchandise to get on the floor for sale without its ceiling price being determined. Is that correct?—A. Anything is possible.

Q. Let us forego the possibility of human error, which 690 we all have to admit is possible.—A. That is correct. The system is set up so that no merchandise should get on the floor unless the ceiling price is established.

Q. Now, then, I believe you further testified that the violations that have been pointed out to you, that is, to the store, by

reason of this investigation, have all been corrected as they were pointed out?—A. That is right.

Q. And is that true with respect to all departments in the store or only those departments in which the investigation took place?—A. That is true with respect to all of the departments in which the investigation took place up to this point. At the same time, since the investigation, we have begun taking inventory in all the departments in the store in order to recheck our records and try to rectify any mistakes that may have happened if we find them. We have had a staff doing nothing but that.

Q. That has not been completed yet?—A. Oh, no; we have had a staff working on that for a long while now.

Q. I believe you stated that all markups must now be approved by your office. A. That is right.

691 Q. And in addition, do they still have to be approved by Mr. Weitzberg or Mr. Brown?—A. No.

Q. That was formerly the case, was it not?—A. That was only the case in the early days while Mr. Levi, I think, was busy with getting the other records set. After a while, mark-ups came through our department.

Q. In other words, the previous order with respect to all mark-ups having to be approved by Mr. Brown or Mr. Weitzberg after May 1st was rescinded, was it?—A. Yes, it was changed because the records were in our office, not in their offices, and the mark-up would have to come through our office, so we could check it against the records, through our price control office.

Q. You did not introduce any bulletin to that effect, did you?—A. No.

Q. There has been no record?—A. No; but that is the actual——

Q. That is the actual practice?—A. Yes, because they can have no records against which to check it. The records are in our office; therefore, we must check it.

692 Q. They have some burden; do they not, for the store's own merchandising procedure?—A. I didn't get the first part of it.

Q. Strike the question. Outside of OPA requirements, someone checks those mark-ups, do they not?—A. They are checked in the merchandise control office after they go through our office.

Q. Yes.—A. That is, they are entered against the records in there.

Q. Now referring, Mr. Etelson, to the Plaintiff's Exhibit No. 31, Department 60—my notes are not clear—Mr. Etelson, did

you say that this 9189 mattress was listed on the base period statement?—A. Yes, sir; that is right.

Q. It is listed?—A. It is listed.

Q. Where do you find that?—A. I said it was listed on page 2, line 10, but that the complete description had been left off by the typist. The complete description appears on OPA-4. It is here.

Q. 2, line 10?—A. Yes, sir.

Q. In other words, on the base period statement, it does not have either the department number or the code number
693 of the manufacturer or the style number?—A. That is right. It is on the OPA-4, but it was evidently left off by the typist.

Q. And it was listed there at—— —A. 29.50.

Q. 29.50, is it not?—A. Yes, sir.

Q. Now, then, referring to page 4 of Plaintiff's Exhibit No. 31.—A. Yes, sir.

Q. I believe you said that that mattress, 866–30 was listed?—A. I said that 866–30 is listed at 13.95.

Q. I didn't get that.—A. It is listed at 13.95 on page 2, line 39.

Q. All right, now, how about the 866 Sound-Sleep mattress?—A. That is not listed, sir; it was sold out in March according to the guide card.

Q. And the 307 Sleepway?—A. That is listed on page 2, line 14, and the word Sleepway appears on the OPA-4 but was evidently left off by the typist.

Q. That is listed, I believe, at 19.99?—A. That is right.

Q. Now, then, with respect to the 307–25 studio; that
694 is listed, I believe, on page 4?—A. Line 9.

Q. Which is described as 60–17307; various covers.—A. Various covers; yes, sir.

Q. And the price is at 34.95?—A. That is right.

Q. And that has been sold, has it not, Mr. Etelson, at prices in excess of the listed ceiling price?—A. According to your records, and evidently according to our guide card, and I would say subject to any correction by finding or sales check, this is the price at which it was sold.

Q. Up to this point you have not found anything to the contrary?—A. No, sir.

Q. Now, then, with respect to this 3073 studio, you find that listed?—A. That is the 307, the one I just pointed out to you. 307, various covers.

Q. That is the same 307–25?—A. That is right.

Q. And the next, I believe, the 387–21412 sofa-bed, is listed on line 14, page 4, is that correct?—A. That's right.

Q. And what is the—is that 49.95, the ceiling price?—
695 A. No. 47.50.

Q. 47.50?—A. That's right. It is listed at 47.50.

Q. Now, then, this next item is the same as we have already discussed, isn't it?—A. That's right.

Q. And now the 66210 utility cot, is that listed?—A. You have it here as listed.

Q. And where do you find that?—A. I took your word for it.

Q. Well, you didn't take our word for anything else; I thought possibly you would want to show that to us.—A. All right; I will find it. It is on page 1, line 46.

Q. 46?—A. Yes.

Q. At 39.99?—A. That is right.

Q. Now, then, with respect to the 92679 streamlined cots; I believe you say those are listed on page 1, line 48?—A. That is right.

Q. And on the base period statement, Mr. Etelson, those cots are not distinguished by size, are they?—A. That is right.

Redirect examination by Mr. HORSKY:

696 Q. One or two questions for clarification. Mr. Etelson, you testified under direct examination and cross-examination that your price control office at the Hecht Company had an unlimited budget; that was correct?—A. That is right.

Q. Was it always possible for you to get all the people you wanted even though you had the money with which to pay them?—A. No; it was not possible to keep the people we had or get the people we wanted. We continually had requisitions in the personnel office trying to get people and replacements.

Q. Do you have any now?—A. Yes, we have had them all the time for some time.

Q. What is the number you know of requisitions that are now pending?—A. I would say that there are—I don't know. I noticed about three or four new people on my staff this morning. I would say that we have had an average of five or six requisitions down there all the time.

Q. With respect to the question which Mr. Austin asked you on cross-examination as to whether the only, or only the departments investigated were being corrected or not, did I understand you to say that you are correcting mistakes throughout the store as soon as they are discovered?—A. We are checking the entire store. We have a staff
697 which has been for some time now on the job of checking and inventorying the entire store, and we are match-

ing the information against our lists, and in order to find any errors that may be in there, and in order to correct them.

Q. When did that begin?—A. That started a long time ago. I would say, to the best of my recollection, it was the latter part of November; sometime in November.

Q. After the investigation but before the suit, is that right?—A. After the investigation, but before the suit.

Q. And that will, so far as it is possible to do so, correct these listing errors which have been pointed out, not only for these departments, but for all departments?—A. That is correct, sir.

Q. And style numbers will be included?—A. Yes, sir; we are doing all we possibly can.

Q. I think that is all, Your Honor.

Re-cross-examination by Mr. AUSTIN:

Q. Mr. Etelson, did any of this checking begin before the investigation?—A. No; not by this particular staff.

Q. That is all.

698 Redirect examination by Mr. HORSKY:

Q. How large is the staff, Mr. Etelson?—A. I haven't checked in the last week. I don't know where it stands right now, but it is a staff of about five under a supervisor.

Q. Just so that it will be perfectly clear, the staff you referred to is the staff that is doing the checking, not your own price-control office?—A. Checking.

Q. How many are there in your price-control office now, with the ones that you saw this morning?—A. I don't know. I mean, I would say that including this staff of five it is around 23, 24 at the moment. It varies day by day. One day I counted there 19, the next day it will be 17, then it will be 22. It is very hard to keep tab on them right now, particularly since I have been on this case.

Mr. HORSKY. I will call Mr. Emil Singer.

Mr. EMIL SINGER, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Will you state your name for the reporter?—A. Emil Singer, 5534 Nevada Avenue, Chevy Chase, D. C.

699 Q. You are employed by the Hecht Company, is that correct?—A. Yes, sir.

Q. What is your position?—A. Buyer of case goods, department 69.

Q. Would you explain to the court what case goods are?—A. It is a technical term for bedroom furniture excluding mattresses and springs, dining room furniture and dinette furniture, anything made out of wood is generally called case goods.

Q. How long have you been in Department 69, Mr. Singer?—A. Five years.

Q. How long have you been employed by the Hecht Company?—A. Six years.

Q. Do you recall, Mr. Singer, the preparation of the lists that you filled out on OPA form No. 4 about the early part of May last year?—A. Yes, sir.

Q. You worked on those?—A. Yes, sir.

Q. Did you use the delivery checks in determining what the ceiling prices should be on those items?—A. No, sir.

Q. Would you explain to the court if you can why you did not?—A. We had meeting after meeting. We have been
700 discussing, the entire situation, and the time element entered into it. It would have taken us months to do it, so we didn't use our sales checks for that purpose.

Q. Will you explain what you did do?—A. We decided to go out on the floor and take our prices appearing on the price tags on the merchandise as listed.

Q. Did you also try to recall whether any of those had been changed from March and changed them yourself, if you remember that?—A. Since March?

Q. Yes, at that time. When you were making out this list, did you try to remember items which might have been sold at a different price in March than the prices on the floor?—A. Yes, in a few cases we have lowered the prices or increased to correspond with what we thought the price was in March.

Q. And you changed those on your list?—A. Yes, sir.

Q. Since March, Mr. Singer, it appears from an exhibit introduced by the Government, Plaintiff's Exhibit No. 22, that there are certain items that were found in your department on the early part of October that were not on any ceiling price list. Can you tell the Court why those items would not be on the list? I will hand you—or have you a copy of the exhibit there?
701 May I make it more specific. Are you familiar with the store form OPA 7?—A. Yes, sir.

Q. Have you made out form OPA-7 on items of furniture?—A. I have made out some.

Q. Would you assume, would these items on this exhibit that you have in your hand be items as to which you have not made out?—A. Yes, sir.

Q. Would you explain how that would happen?—A. We have taken the listing of all the merchandise on our floor. I

believe it was the 16th or 18th of May, and naturally since merchandise coming onto the floors didn't stop on account of market conditions—we were preparing for our half-yearly sale—and this merchandise evidently came on the floor, and that is the reason after May 18th, that is the reason ceiling prices have not been listed on the original list.

Q. Do I understand you to say that you were too busy to list them, is that the idea? You had too much merchandise?—A. We were preparing at that time the original list, and meanwhile this merchandise kept on coming in and we did not get to it to list these also.

Q. You understand that you have to make out an OPA
702 No. 7 form for each item?—A. I have made out OPA-7 forms and I had them on my desk and I showed them to one of the investigators, Mr. Weber, I believe, and I believe Mr. Kaplan also, even though OPA–7 forms were not turned into Mr. Etelson's office, because I had shopping to do. It is a very long procedure and would have taken a lot of time. I had to go out shopping myself. Comparisons have to be made, and that was the reason for the delay.

Q. These comparisons you speak of that you have to shop for were items that were not on sale in the Hecht Company, is that correct?—A. Some of them were not on sale at the Hecht Company, and some of them were not in stock any more at the time, although they appeared on the original ceiling price lists, and nobody else could make a comparison unless it was me personally, because I had a picture in my mind of the merchandise, and in order to be able to make a proper comparison according to the OPA rules, the item has got to be similar in appearance and serviceability, and nobody else can determine that but me as the buyer, because I have the picture of that merchandise in my mind.

Q. You understand now, do you not, Mr. Singer, that no item can be sold until the OPA–7 has been filled out?—A. Yes, sir.

Q. And has gone through Mr. Etelson's office?—A. Yes, sir.

703 Q. And that is being done?—A. That is being done to the best of my knowledge.

Q. Now refer to that Plaintiff's Exhibit No. 22, Mr. Singer. Will you tell the Court whether there are any items on that exhibit which actually do appear on your ceiling price list? I will hand you the ceiling price list and ask you to point them out to the Court. Are there any items on there that are actually listed, are there items on this exhibit that are actually on your list?—A. I believe there are some items. I will verify with the list in just a second.

Q. Will you indicate as you go along?—A. Yes, sir.

Q. May I help you, Mr. Singer? I refer to the item which is entitled style 5051, armchair, blue, and ask you if that is listed on page 10, line 15?—A. That is right; it is on page 10, line 15, 49–5051 armchair listed at $19.95.

Q. I refer you to the next item, which is described as 5051 armchair—that is the same chair, I take it.—A. That is a duplication of the same item.

Q. 5052 armchair, 5053 armchair, is that listed on page 14, line 15; excuse me, page 10, line 17.

Mr. AUSTIN. That is for 5053?

704 Mr. HORSKY. 5053, that is right.

The WITNESS. It is listed on 10, line 17, 5053 at $14.95, and on——

By Mr. HORSKY:

Q. Just a moment, Mr. Singer; I notice it is also the next one in green, if I read this correctly.—A. One is an armchair and the other one is a side chair.

Q. Excuse me.—A. And on ten, line 7, 49–5054 is listed at $12.95.

Mr. AUSTIN. What line is that

The WITNESS. 10, line 7, 49–5054.

By Mr. HORSKY:

Q. A side chair at $12.95, is that correct?—A. Yes, sir; side chair at $12.95.

Q. Near the bottom of the exhibit, Mr. Singer, I refer you to item listed as 765–366, a china table, is that listed on page 12, line 21?—A. On page 12, line 21, 765–366, there is no title given to the piece of merchandise, there is no description, I mean, at $39.95, but the number 366 from that particular factory designates a china closet.

Q. China closet?—A. Yes, sir.

Q. Would china refer to anything else than closet?—A. No, sir; not in my department.

705 Q. The next item, Mr. Singer, is the one immediately below that, 765–373; is that listed on page 13, line 21?—A. On page 13, line 21 we have listed 765–373 item which is a refectory solid maple table. Description has evidently been left out. It is listed as a table.

Q. With the style number?—A. That is right.

Q. Now the fourth item from the end of that sheet is 429–4100 bench. Is that listed on page 1, line 4?—A. Page 1, line 4, we have listed 429–4100 blond mahogany veneer and gumwood bench at $13.95.

Q. On the next sheet, Mr. Singer, I refer you to the item about 10 lines down, 765–12; china closet, is that listed on page 12, line 24?—A. 12, line 24, china closet, is listed 765–12 at $29.95; that is a china closet.

Q. And at the last item of the middle group on that same sheet, page 2 of Plaintiff's Exhibit No. 22, I refer you to an 8001 chest and ask you if that is listed on page 16, line 6?—A. Page 16, line 6, there is No. 8001, solid maple chest listed at $23.

Q. The fourth item from the bottom on page 2 of Plaintiff's Exhibit No. 22 is a 746–307 chest. I ask you if that is
705A listed on page 16, line 9?—A. Page 16, line 9, is listed 307 solid maple chest at $27.95.

Q. I notice that this one is indicated as A–307.—A. That is erroneous. That should be B–307, for the simple reason that this manufacturer from season to season changes the designs to a small extent in order to be able to discriminate between them. They put these letters in front of it. This has not been in stock, the A–307, since 1941, I believe.

Q. The listing you have, however, is——A. Is just 307.

Q. Without the letter?—A. Without the letter, because that is the only one we had on the floor.

Q. Should it be described as B–307 on this list?—A. Well, if we had any of the others in stock it should be described as B–307 just for the purpose so the customer who makes the purchase gets the proper chest; otherwise, they would not know which one to send them.

Q. They both sell at the same price?—A. The prices in 1941 were different than they were in 1942.

Q. On the next item, a chest, 310, I ask you if that is listed on page 16, line 10?—A. That is also listed on page 16, line 10, as 310; either the A or B has been left out, and this is a part of the same series. You see, a bedroom suite consists of
706 seven pieces, bed, dresser, chest, vanity, bench, night table, and chair. So this is a part of that same series.

Q. Is the series called 310?—A. 300 series. The second two numbers indicate the particular piece. It is either a bed or a chest or a dresser; 300 would be a dresser, 307 is a chest.

Q. I see. Now, the next to the last item on that sheet is 328, vanity, is that listed on page 16, line 8?—A. That is listed as 328, vanity, at $35, and that is a part of the same series that we mentioned a few minutes ago.

707 Mr. Horsky. Your Honor, I would like to pursue the same course with these furniture departments that I did before, and I would like to have Mr. Weitzberg, who is the man who has helped Mr. Etelson on the investigation, take

them up from time to time. I have put the buyers on from each department, and I'd like to call on Mr. Weitzberg from time to time for further evidence. So at this time I have no more questions for Mr. Singer, but I want the Government counsel to understand there will be another man testifying about this department.

Mr. AUSTIN. We understand this is the method counsel for defendant expects to pursue. Are you through with Mr. Singer?

Mr. HORSKY. Yes.

Cross-examination by Mr. AUSTIN:

Q. Mr. Singer, you said that you showed OPA-7's that you had made out to Mr. Weber?—A. Mr. Weber and Mr. Kaplan.

Q. And you showed them to Mr. Kaplan?—A. Yes; they were not in the OPA office. They were in the office in the midst of preparation. In other words, the top had been filled out and the bottom comparison hadn't been made on all of them as yet at the time.

708 Q. But you did show him the store's OPA-7 form?—A. Yes, sir.

Q. Which you had started to fill out?—A. Yes, sir.

Q. How many of those did you show him?—A. Oh, I venture to say it must have been 150 to 200.

Q. It must have been 150 to 200?—A. I couldn't recall exactly. I didn't take a count.

Q. Was the merchandise which those represented on the floor selling at that time?—A. I should say a great part of it.

Q. A great part of it.

Mr. AUSTIN. That is all, I believe. Just step down, Mr. Singer.

(Witness excused.)

Mr. HORSKY. I will call Mr. Weitzberg.

OSCAR C. WEITZBERG, a witness called on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name to the reporter, Mr. Weitzberg?—A. Oscar C. Weitzberg, W-e-i-t-z-b-e-r-g.

Q. Are you employed by the Hecht Co.?—A. That's correct.

709 Q. What is your position?—A. I am the comptroller of the store.

Q. Have you been assisting with respect to the investigation

of the exhibits introduced by the Government in this case?—A. I have.

Q. You have made the investigation of Department 69?—A. That's correct.

Q. With respect to these exhibits?—A. That's correct.

Q. You had the assistance, I take it, of Mr. Singer?—A. Mr. Singer; yes, sir.

Q. Did anyone else assist you?—A. Yes; I had a number of people in the warehouse assist me in pulling checks and reviewing the guide cards.

Q. Could you estimate how many people it was?—A. I'd say about 4 people, besides Mr. Singer.

Q. You have also investigated, I believe, Departments 59 and 76, is that right?—A. That's correct, sir.

Q. How long have you spent in the investigation of these three departments with respect to the Government's exhibits?—A. Since the early part of December.

710 Q. I don't suppose you have been full time?—A. No. I have had some other duties to take care of, but it took most of my time. There were a few days when I didn't do anything on this, but I generally started about ten o'clock and worked all the way through until about 5:00 or 5:30.

Q. I hand you, Mr. Weitzberg, Plaintiff's Exhibit 20 in four sheets, and ask you if you have investigated the items on that Exhibit?—A. I have, sir.

Q. The first item on that Exhibit is an item which has no figures on the right-hand side of the page, which indicates sales after May 18.

Mr. HORSKY. Do I understand, Mr. Austin, that that means that that is to be ignored?

Mr. AUSTIN. Yes.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a vanity which lists a March price at $36.00 and sales at a later date of $38.00, and is indicated as not being listed. What did your investigation disclose with respect to that item?—A. May I refer to my notes?

Q. Yes; you may.

(Witness referred to notes.)

711 A. My investigation disclosed that the highest delivery was $35.00, although there were sales in March at $38.00.

Q. Which were not delivered in March?—A. That's correct. They were delivered in April.

Q. I notice that there is one sale at 39, although the others are at 38. Did you discover anything with respect to that

item; that particular sale?—A. I don't appear to have a guide card after July 3, and this was a sale, according to my notes, that was cancelled on August 2. I have no other information about the sale of $39.00 except that it was cancelled on August 2.

Q. You don't have that guide card?—A. No.

Q. Did you find out whether this was listed, Mr. Weitzberg?—A. No; this was not listed.

Q. Your conclusion is that the sales after May 18 were at too high a price?—A. That's correct, sir.

Q. The next item is a walnut chest to Richard Lewitt, the March price being $33.95, and subsequent sales at $39 and $37.95, and indicated as being listed. What did you discover with respect to that item?—A. The highest delivery in March was $33.95.

712 Q. I notice that both of the sales, Mr. Weitzberg—One is to Lewitt and one is to Lothewitt. It looks as if it might be the same. Have you investigated?—A. Yes; it seems as if they are the same. The second one is an exchange and not a sale. That is, apparently the first piece of merchandise that was delivered to the customer was damaged and we had to send her another one, and the guide card shows there was one sale and an exchange.

Q. And these are both the same person?—A. That's correct.

Q. So there was really only one sale of this walnut chest after May 18?—A. That's correct.

Q. At what price was that sale, Mr. Weitzberg?—A. That sale?

Q. That is, was the sale at 39 or 37?—A. The sale was at $37.95 on June 16.

Q. This Exhibit indicates that on June 16 the $39.95 item applied. Will you check that again?—A. I'll check that. The guide card shows $37.95.

Q. On June 16?—A. June 16, that's correct.

Q. Thank you.

Mr. HORSKY. I should indicate, however, that I would
713 be perfectly willing to have Government counsel cross-examine as we go over this so we won't have to go over it, if they wish.

Mr. AUSTIN. We will do that, but we see no occasion so far, if the Court please.

Mr. HORSKY. Thank you.

By Mr. HORSKY:

Q. The next item is a vanity with the price indicated at $46.00 in March and one sale at $50.00. And there is an item on the submitted ceiling price list column indicating "Exchange

50", which I do not understand. Will you explain what you found out with respect to that item?—A. I don't have the guide card for that.

Q. You do not have the guide card?—A. No; I do not have the guide card for that. You see, the reason I don't have all the guide cards is because we are taking inventory at this time, and some of these guide cards are what we call current guide cards and they have to be checked; and we just completed our inventory on Saturday, and some of those cards are being processed right now.

Q. What was the result of your investigation from the information you have on this item?—A. The result of my investigation showed that the correct ceiling was $46.00, and
714 I haven't been able to check to see whether that was a $50 sale or whether that was an exchange which had been posted at $50.00.

Q. The last column indicates, "Exchange" and then "50". Would that suggest to you that it was an exchange at $50?—A. If I remember, and it is quite some time since I worked on this particular card, there was an exchange at $50.00, but the only thing I was checking at that time was our highest delivery, which was $46.00.

Q. I see. Was this listed, Mr. Weitzberg?—A. Yes; it was listed at $50.00. That was on page 2, line 48.

Cross-examination by Mr. AUSTIN:

Q. If the transaction with Mr. Behrens was an exchange, he was charged $50.00, was he not?—A. Not necessarily, because we post to the guide cards in order to show that a piece of merchandise has left our stock. The guide card, after all, is a control of stock. When there is a sale, we post an entry showing the amount that we charged the customer from the sales check. When there is an exchange and we exchange a piece for a customer, the service bureau or the adjustment bureau makes an exchange order. The rule is that they're supposed to check with the sales check to see what the customer had been
715 originally charged. If they pick up the wrong sales check in making out the new exchange order, or if they can't find it, then they call the warehouse to find out what the proper price is for that particular piece of merchandise. If it is called over to the girl incorrectly, and it is conceivable that it may be because of the fact that some of the numbers are so close to each other and the girls, after all, some of them, are new and untrained, may call off the wrong price.

Actually, the customer isn't charged $50.00. It's just a clearance on our guide cards, $50.00 for a piece going out;

and then there will be a credit of $50.00 for a piece coming back. That is, our exchange order has a top and a bottom. The upper part of the exchange order shows the amount that we charge it out at, and the bottom part shows the amount that it is credited in at, and it's at the same price so there would be no overcharge to the customer.

Redirect examination by Mr. HORSKY:

Q. The $50.00 has no relation to what the customer pays at all? It is merely internal bookkeeping?—A. It is merely internal bookkeeping.

716 Q. The customer never sees the exchange order?—A. I think the customer may see the exchange order only to sign as receiving the merchandise.

Q. I see. The next item, Mr. Weitzberg, is a walnut bed. Apparently there are two style numbers. Will you explain what you discovered with respect to the walnut bed sold to Richard Bowie and listed here at $7.95 and $20.00 in March? And then some subsequent sales at——A. There are two items. That isn't a bed. If you are referring to Style No. 731-2235, that is a bench.

Q. That is a bench? I see.—A. At $7.95.

Q. And one sale of that bench at $11.95?—A. That's correct.

Q. What did you discover with respect to that item?—A. According to the record here, the correct ceiling price is $7.95. The last piece of merchandise was sold on April 11 for $7.95. On June 27 one of the customers cancelled his purchase and we had a piece returned on June 27 for $7.95. This apparently was sold to customer Hartley on July 17, for $11.95. How it came about that he was sold at that price I can't understand, because our regular price was $7.95. It is possible that someone put the wrong tag on there.

Q. The sale was at $11.95?—A. $11.95.

717 Q. That is indicated as being not listed, or it has no indication at all in that column, Mr. Weitzberg. Did you discover whether it was listed or not?—A. No; it was not listed because apparently this entire transaction occurred at a time—I just want to review the dates for you. We sold our last piece on April 11. Sometime in May Mr. Singer apparently made his listings, and there was no merchandise then. The piece was returned by a customer on June 27. A piece was sent to the store—this piece that was returned—on July 9. It was sold on the 17th, so there was no opportunity for listing it.

Q. But it should have been listed originally in the original list?—A. It should have been in the original list, but accord-

ing to the way Mr. Singer did it, which he testified to before, which was from the floor pieces, there was no such piece on the floor at the time he made his listing.

Q. Yes; but it was not priced.—A. That's correct, sir.

Mr. AUSTIN. You didn't mean to intimate that Mr. Singer's method of listing it wasn't a correct way there?

The WITNESS. I haven't said that.

Mr. AUSTIN. I know you haven't said it, but you referred to the way he did it. You weren't intimating that either?

The WITNESS. I wasn't trying to. I just said that
718 was the way he listed it, in trying to account for the reason that he didn't have it on the original list.

Q. Now the next item, Mr. Weitzberg, is the bed to which I referred before, at $20.00, with two sales at $22.00 subsequent to May 18. Would you indicate what you discovered with respect to that item?—A. The highest delivery was $20.00. There were two sales at $22.00 which were above the ceiling.

Q. What was the date of the sale of which the delivery was on March 2?—A. The ceiling was based on the sale to Richard Bowie, which was made on February 25, and which was delivered on March 2.

Mr. HORSKY. Excuse me, do you have some questions, Mr. Austin?

Mr. AUSTIN. No; I believe not.

By Mr. HORSKY:

Q. The next item is a mahogany dresser with the highest delivered price of $35.00 in March indicated on the Exhibit; and sales thereafter at $43.00, at $39.00, and $40.00. What did your investigation reveal with respect to that item?—A. The sale to Herbert Tucker, on which the ceiling was fixed, was made on February 24 and was delivered on March 21.

Q. Is that the highest delivered price in March?—
719 A. And that was the highest delivered price in March. There was one sale, however, in March at $40.00 to a customer by the name of Salva that wasn't delivered until April 16. So that the highest sale in March was $40.00, although it was not delivered.

Mr. HORSKY. Thank you.

Mr. AUSTIN. Mr. Weitzberg, does the figure "43" on the submitted ceiling price column indicate that it was listed at $43.00?

The WITNESS. That's correct, on page 5, line 42.

Mr. AUSTIN. Is that equally true of the previous "22"? Does that mean that it was listed at $22.00?

The WITNESS. That's right.

Mr. AUSTIN. Thank you.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a dresser with an indicated highest March price of $35.00 and sales thereafter at $40 and $43.—A. That is a continuation of the previous item.

Q. I see. That is simply the same item?—A. That is continued with a repetition of Mr. Tucker's name.

720 Q. I see. And the same explanation, of course?—A. That's correct, sir.

Q. The next item is a chest on chest, with the March delivered price indicated on the Exhibit of $28.95, and with various sales thereafter at $42.95 and $38.95. Would you indicate what you discovered with respect to that item?—A. According to my investigation, I find that the highest delivery was at $39.95.

Q. $39.95?—A. That's right.

Q. Do you have some document there evidencing that?—A. Yes; I have an exchange to Vincent De Francis on March 10.

(Witness handed document to Mr. Horsky.)

Q. Is this an exchange order?—A. That's correct.

Q. You have just testified, however, Mr. Weitzberg, that the exchange might be at an arbitrary price. Could you indicate whether or not that would be the actual price at which the customer would be charged for the merchandise if it is an exchange?—A. According to the guide card, the customer De Francis was charged on February 21 at $39.95. Apparently this chest was damaged on delivery and we exchanged a new chest on March 10.

721 Q. But this was the same chest that was delivered?—A. That's correct. The reason for the exchange was damaged on delivery.

Q. And the chest was delivered to the customer in March?—A. At $39.95; that's correct.

Q. And the price the customer paid was $39.95?—A. That's correct.

Q. Can you take that apart [indicating document in witness's hand].

(Witness detached document.)

Mr. HORSKY. I offer this in evidence, Your Honor, as Defendant's Exhibit 10.

(The document was marked "Defendant's Exhibit 10" and received in evidence.)

The WITNESS. There was one additional sale on March 28 to customer Evans of $42.95, but this sale, however, was not delivered until April; so that the highest price sold in March was $42.95 but not delivered.

By Mr. HORSKY:

Q. The highest delivery in March was $39.95, is that correct?—A. That's correct.

Q. That means that the items listed in the right-hand column at $42.95 are sales higher than the ceiling price, and the items listed at $38.95 are lower than the ceiling price?
722 Is that correct?—A. That's correct, sir.

Q. And that the overcharge should be adjusted accordingly?—A. That's correct.

Mr. AUSTIN. That is listed as $42.95, is it not, Mr. Weitzberg?

The WITNESS. That's correct. It was listed at $42.95.

Mr. AUSTIN. And those sales then at $42.95 would all be in excess of the proper ceiling price?

The WITNESS. That's correct, sir.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a bed at $20.00 which the Exhibit indicates as the highest March price, and sales thereafter at $24, $22, and one at $28.42. Did you investigate that item?—A. Yes; I investigated this item and found that the highest delivery was at $20.00; although this particular bed sold for $22.00 in 1941, it was on sale in March at $20.00 and the highest delivery was at $20.00. I haven't been able to find the check for the peculiar price of $28.42.

Q. The sales check, you mean?—A. The sales check; so that I can't tell for a certainty that that is correct,
723 although the guide card does show a transaction of $28.42.

Q. Was this listed, Mr. Weitzberg, at $24.00?—A. This was listed at $24.00.

Q. And your conclusion is that these sales were above the highest delivered March price?—A. That's correct.

Q. The next item is a bed, $20.00, with sales at $22 and $24. Did you investigate that item?—A. That is a duplication of the line above.

Q. Then that is a continuation of the same bed?—A. Yes; except that this is indicated as a 3–3 bed, whereas the case above was a 4–6 and not a 3–3 bed.

Q. I see. Delivered to the same person on the same date?—A. That's correct.

Q. And the same explanation applies?—A. That is correct.

Q. The next item is a 4–6 mahogany bed with a March delivery price indicated at $18 and two sales at $20. Did you discover anything with respect to that item?—A. Yes; according to the guide cards, the sales to Cloy and Lewis were made in 1941 and not in 1942.

Q. You have the guide card?—A. I do.

724 Q. Could you indicate to the Court how you can tell that they are 1941 sales?

(Witness handed document to the Court.)

Mr. HORSKY. Speak up, Mr. Weitzberg.

The WITNESS. Apparently this is the entry of $20.00 to Cloy and this entry of Lewis is where the investigators for the Government made their exhibit. However, this is 1941 and not 1942, because this indicates that this is the beginning of our 1942 fiscal year. So that this would all be 1941 transactions and not 1942.

By Mr. HORSKY:

Q. Would you explain a little more so that the record will be clear as to what you mean by saying "this" indicates that it's the 1942 guide card, or the beginning of the 1942 listing?—A. Well, the entries to Cloy and to Lewis occur before the notation in blue pencil, January 30th inventory, which was the January 30, 1942, inventory.

Mr. HORSKY. I'll offer that in evidence, Your Honor, as Defendant's Exhibit 11.

(The document was marked "Defendant's Exhibit No. 11" and received in evidence.)

The COURT. We will recess for five minutes.

(The hearing was recessed at 3:00 p. m.)

725 Q. At the recess, you were just explaining the guide indicating that the two sales to Clay or Cloy were in 1941; is that correct?—A. That is correct.

Mr. HORSKY. Do I have that exhibit (addressing Mr. Austin)? Did I introduce it in evidence?

Mr. AUSTIN. You did introduce it.

Mr. HORSKY. Is it there (addressing the Clerk)?

The CLERK. Yes; it is; it is Number 11.

Q. The next item is a bench at $6.95 on the exhibit and has the highest delivery March price with one sale of $8.95. What did you discover with respect to that item?—A. The highest delivery price was $6.95.

Q. And the sale is?—A. $8.95.

Q. And is above the proper price?—A. That is correct.

Mr. AUSTIN. And above your listed ceiling price?

The WITNESS. That is correct. It happens to be the last sale of this piece and the last prior sale had been back in August—August 21st, to a customer named Smith, for $6.95, and that sale was cancelled, and the piece came back to

726 the warehouse and was sampled to the store and perhaps was mis-tagged at that time.

Q. I didn't ask you about the listing of the previous item. It is indicated here as being not listed; is that correct?—A. Are you referring now to two seven three one nine five?

Q. No; the item at $18.00, as to which there were two sales in 1941?—A. That is correct; it wasn't on the list.

Q. It wasn't listed. The next item is a walnut dresser with an indicated highest delivery price in March, of thirty-six and one sale at thirty-eight. What did you discover with respect to that item?—A. The highest was thirty-six dollars.

Q. And the sale at thirty-eight was above——A. (Interrupting.) Above the ceiling price.

Q. Above the ceiling price?—A. That is correct.

Q. Was that listed?—A. Yes; that was listed on page six, line five, at thirty-six dollars.

727 Q. Thirty-six dollars?—A. That is correct.

Mr. AUSTIN. And the sale then was above your own ceiling price?

The WITNESS. That is correct.

Q. The next item is a dresser with the same figure, thirty-six dollars, in March, and thirty-eight dollars thereafter. However, it is a different dresser, I take it, and a different style. What did you discover with respect to that item?—A. The highest delivery was thirty-six dollars.

Q. I notice there are two sales indicated to McGlade; are they both sales?—A. No; the transaction of August 6th is not a sale but a credit which indicates that the McGlade sale of July 6th was cancelled, so in place of having two violations, there shouldn't be any, because the cancellation took place in August.

Q. You mean in place of four, there should be two?—A. I am sorry.

728 Mr. AUSTIN. I object; that is an unwarranted assumption. Let us get that straight.

Mr. HORSKY. You can go ahead and ask him, if you want to.

Mr. AUSTIN. Was there a sale made to McGlade on the 6th of July?

The WITNESS. That is correct.

Mr. AUSTIN. And then you say what is indicated here as a sale on the 6th of August was just an exchange or credit?

The WITNESS. No; this was a credit.

Mr. AUSTIN. In other words, he brought the merchandise back?

The WITNESS. Not necessarily. It may never have left the warehouse. In other words, the fact that an item is listed on the guide card does not mean we have shipped it to the customer.

Mr. AUSTIN. But the sale was made on the 6th of July?

The WITNESS. There was one in July, but there was no sale

in August; there was a red figure, showing a credit or cancellation of the previous transaction on the 6th of August.

729 Mr. AUSTIN. Assuming what you say to be true, don't you mean to say instead of being two sales, there was only one sale?

The WITNESS. That is right.

Mr. AUSTIN. There was one sale to McGlade?

The WITNESS. Yes; there was one sale, and there was a cancellation of that on August 6th.

Direct examination (continued) by Mr. HORSKY:

Q. When you say "sale," you mean, I take it, there was a customer that came in and ordered the merchandise? It was still unconsummated by being delivered?—A. I assume that; yes.

Q. It did not mean it was actually so and all the money paid and everything taken care of?—A. I haven't any other information, except the guide card.

Mr. HORSKY. I will offer that guide card in evidence as Defendant's Exhibit 12.

(The document was marked "Defendant's Exhibit No. 12," and received in evidence.)

Q. That is indicated as being not listed, is that cor-

730 rect?—A. I have it as listed on page five, line fifty. (Looking at papers) I want to check it. It is listed here as thirty dollars, but apparently that is incorrect, because the highest delivery was thirty-six dollars.

Mr. AUSTIN. But it is on there as thirty dollars?

The WITNESS. Yes. I haven't verified that against the original sheets; whether the work sheet prepared was thirty or thirty-six dollars and whether this is a typeographical error or not.

Mr. AUSTIN. Of course, the work sheets were not filed with the O. P. A.?

The WITNESS. No; this was filed with the O. P. A. [indicating].

Mr. AUSTIN. And these sales of thirty-eight dollars would be above your own ceiling prices; whether it was thirty dollars or what you say it should be?

The WITNESS. Yes, sir; thirty-eight dollars would be above the thirty-six dollars, which is the highest delivery.

Redirect examination (continued) by Mr. HORSKY:

Q. The next item is a single line across the bottom

731 of that sheet; a chest at $32.95, with an indicated delivery thereafter after May 18, at $38.95. Did you

make an investigation of that, and what did you discover, if you did?—A. The highest delivery was $32.95.

Q. And the sales at $38.95, was above ceiling price?—A. That is correct.

Q. Is that the correct sales check number on that exhibit?—A. The correct sales check number, but I think it has the wrong style number. The style number here is 27–3522. It should be 27–3532.

Q. On this exhibit, I notice that apparently the sales check number column has style number under it and factory and style number under it.—A. That is correct.

Q. In other words, the exhibit should be reversed?—A. That is correct.

Q. That is true of all the items on this sheet? They are turned around?—A. Yes; in other words, the items under sales check number are actually factory and style number.

Q. And in this case, the style number is erroneously
732 indicated in addition to that?—A. That is correct.

Q. The next item is a dresser with the highest delivery March price indicated at $40.00 and four sales thereafter at $44.00. What did you discover with respect to that item?—A. The highest delivery was $40.00, although, according to the guide card, there was a sale of $44.00 in March to Hanley.

Q. A sale of $44.00 in March?—A. Yes; according to the guide card.

Q. Have you any record of when that was delivered?—A. Oh, yes; I have the Hanley check. The sales however is dated February 28th, although it is shown on the guide card as March. It wasn't delivered till May 4th.

Q. It was sold in March, but not delivered?—A. It was actually sold in February, but posted on the guide card in March.

Q. And the sales at $44.00 are above the highest delivery in March?—A. That is correct.

Q. Was that listed at $44.00?—A. Yes; on page 2, line 38.

733. Q. The next item is a chest-on-chest with the March price indicated at $20.00 and some items with no prices and some with $28.95 after it and one of $55.90. Did you investigate that and what did you discover?—A. In the first place the thing seemed to be a little jumbled up to even that and the best I could establish was a ceiling for this particular item number, 746–4110 chest-on-chest was $26.95 based on a sale to Rebecca Libby. There were 13 violations listed here, with no amounts. I presume, of course, in the course of their investiga-

tion, the Government apparently had a lower sales check and then found this $26.95 and voided the other ones.

Q. What did you discover with respect to this $55.90 sale?—A. There was no such price at $55.90. This "Price" is the name of the customer in this case. There was no violation to Price. That $55.90 on July 10th was a sale, $26.95.

Q. Have you the sales check?—A. I have the guide card.

Q. Would you indicate to the Court where Price appears on there?

734 (Witness steps up to the Judge and exhibits same.)

Mr. AUSTIN. We will admit, if the Court pleases, that item should not be in there, through some error, as indicated by the fact that no overcharge was entered in the column for that.

Mr. HORSKY. An error by the person who made up the Government Exhibit, is that right?

Mr. AUSTIN. That is right.

Mr. HORSKY. Not our error?

Q. I am not clear, from the way that is set up, as to whether that is listed or not. Is that listed at $28.95?—A. No; the sale was $26.95.

Q. Is the item listed?—A. The item is listed at $28.95, page 12, line 49.

Mr. AUSTIN: And all the sales in excess of that amount are the same as your own?

The WITNESS. Not all. There are a number of transactions listed as sales that were not sales, but credits. For ex-

735 ample, there is one to Talbert, listed here as seven six. That is not a sale but a credit.

(At this point, the witness stepped up to the Judge and exhibited same.)

The WITNESS (addressing the Judge). That is not a sale, but a credit. It is listed to Talbert, $28.95.

Q. That would indicate it had been sold prior to this time, or returned?—A. Yes [looking through records]. I am trying to find when it was sold.

Q. I don't find Talbert on the list prior to that. Would your conclusion that it was sold prior to May 18th—is that likely if his name does not appear?—A. I am trying to see whether they have it listed or not, because sometimes the original sale may be under another name, because of the poor handwriting. In other words, Talbert may be anything on that as a prior sale, so I couldn't say whether you have it listed or not.

Q. On 7 16 42 there was a transaction of Talbert; that was not a sale?—A. No; that is an entry in red, which would indicate a credit.

Mr. HORSKY. Any questions?

Mr. AUSTIN. No.

Q. The next item is a maple dresser, with the highest
736 delivery March price indicated as $31.00 and a series of sales at $33.00; what did you discover with respect to that item?—A. That the highest delivery was at $33.00.

Q. Do you have the sales check?—A. Yes; I have a sales check.

Q. This is a sale to Mrs. Fred Hinkle, delivered March 19th, 1942; is that correct?—A. That is correct.

Mr. HORSKY. I offer it in evidence as Defendant's Exhibit 13.

(The document was marked "Defendant's Exhibit 13," and received in evidence.)

Q. Was that listed?—A. No; it was not listed. I have no record of it having been listed.

Q. The sale of $33.00 was at the March ceiling price?—A. That is correct.

Mr. AUSTIN. I notice this sales check is for 746–4200 and the style number on the exhibit is 746–4200A.—A. The "A" is a classification.

The COURT. What?

The WITNESS. The "A" they refer to is a classification.

737 Mr. AUSTIN. You have the guide card on this?

The WITNESS. Yes; I do.

(At this point, the witness hands a document to Mr. Austin.)

Mr. KAPLAN. Is that the only guide card?

The WITNESS. No; there's others; that is one of the Hinkle sale.

Mr. AUSTIN. Do you know who entered a notation here, "Ceiling $31.00," on these guide cards; do you know what that means?

The WITNESS. No; I imagine that the seller may have put it down in pencil at the time they worked with the investigator for the Government.

Mr. AUSTIN. Would that be Mr. Crone's writing?

The WITNESS. I couldn't say.

Mr. AUSTIN. The sale, I notice, is in Department 59; isn't it?

The WITNESS All the Furniture Department is in Department 59; "69" and "76" are all written on the 59 Department sales check, but if you look at the left-hand side, it is "69" on the left; in the left-hand column.

Redirect examination (continued) by Mr. HORSKY:

Q. The next item does not have any prices after the
738 names, so I presume that is not challenged as improper.

Mr. AUSTIN. That is right.

Q. For the purposes of the record, what was the highest price on this dresser listed here at $20.95?—A. $23.95.

(At this point, a discussion was had off the record amongst the attorneys for the respective parties.)

Mr. HORSKY. The Government requests that I put in evidence the guide card of that last transaction. May I offer them in evidence as Exhibits 14, 15, and 16?

(The documents were marked "Defendant's Exhibits 14, 15, and 16," respectively, and received in evidence.)

Q. The next item, on the top of page 3 of the same exhibit, is also indicated with no comments on the right-hand side of the page, and I take it that is not alleged to be improper?—A. I assume it likewise.

Q. The next item is a bed or two beds with the highest delivery March price at $13.00 and various sales of the bed at $14.00; what did you discover with respect to that item?—A. The highest delivery in March was $13.00, although it had sold in 1941 at $14.00. Apparently it had been put on special sale during the month of March 1942, at $13.00.

739 Q. Was it listed?—A. Yes; page 12, line 55, at $14.00.

Q. And the sale was at $14.00 above the highest delivery March price?—A. That is correct.

Q. The next item is a dresser with an indicated March price at $24.00 and a single sale at $26.00. What did you discover with respect to that item?—A. The highest delivery in March was $24.00, and there had been one sale in May at $26.00.

Q. Above the highest delivery price?—A. It was above the highest delivery price in March.

Q. Was that listed?—A. No; it was not listed.

Q. The next item is two beds, with no prices on either the left-hand or the right-hand column, and I assume that that case is not challenged; is that right?

Mr. AUSTIN. That is correct.

Q. The next item is a chest-on-chest with an indicated March delivery price at $39.45 and a single sale at $39.45; what did you discover with respect to that item?—

740 A. The highest delivery in March was to Schmidt on a sale that was made on February 26th. The correct ceiling therefore should be—is listed here $39.45, although the sales check reads $39.50.

Q. The ceiling should be $39.50?—A. And not $39.95.

Q. Do you have the sales check?—A. Yes.

Q. Is the sales check to August Schmidt?—A. That is right.

Q. Delivery March 3?—A. That is correct.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit 17.

(The document was marked "Defendant's Exhibit 17" and received in evidence.)

Q. That is, the ceiling price is not as high as indicated on the Government's Exhibit?—A. That is correct.

Q. And the sale was over the ceiling price; is that listed at $33.95, as indicated on the exhibit?—A. It wasn't listed at $33.95; it was listed at $39.95.

741 Q. On what page?—A. Page 14; line 6.

Mr. AUSTIN. You say that the letter on the sales check describing the styles of this chest-on-chest is the same as you formerly described it?

The WITNESS. I don't know what you refer to.

Mr. AUSTIN. In other words, it merely denotes a classification?

The WITNESS. You mean on this sales check?

Mr. AUSTIN. Yes.

The WITNESS. I will check that in a minute. [Checking same.] Yes; I understand it to mean the classification.

Mr. AUSTIN. Whether it is put at the head of the style number or the rear of the style number, it does not make any difference.

The WITNESS. In checking guide cards, I don't recall any place where a letter was an important figure. I always understood the letter to be the classification; in this case, Class A.

Q. The next item is a bench with an indicated March delivery price of $12.95 and a single sale at $14.00. What did you discover with respect to that item?—A. I couldn't find the sales check on Lunex sale.

Q. What is the highest delivery price in March?—
742 A. $12.95.

Q. With respect to the Lunex sale, what did you discover?—A. I couldn't find a sales check. The guide card isn't very clear either, because apparently someone had written "$10.95" and then written over the zero in the $10.95 a "4," so it looks like $14.95.

Q. Would you indicate to the Court what you mean?

(At this point, the witness steps up to the Judge and indicates same.)

Q. Do I understand you to mean that you cannot tell; you cannot find the sales check?—A. No; that is, to check whether this was $14.00, as they have listed here, or $10.95, because it looks as though it was originally $10.95, and someone wrote a "4" over the "0" in the ten.

Q. Was this listed at $10.95?—A. This was listed at $10.95, on page 3, line 44.

Mr. HORSKY. May I offer this in evidence as Defendant's Exhibit Number 18.

(The document was marked "Defendant's Exhibit 18" and was received in evidence.)

Q. The next item is a bed with the highest delivery March price indicated at $32.00 and two sales thereafter at
743 $34.00; what did you discover with respect to that item?—A. The correct ceiling is $34.00, which is the highest delivery in March.

Q. You have a sales check for that?—A. Yes; I have a sales check to a customer named McIntyre; sales check number 5977–33.

Q. Incidentally, the same confusion with respect to sales check number and factory and style number appears on page 2?—A. That is right; it continues through the entire exhibit.

Q. Would you indicate to the Court where the item appears on that sales check?

(At this point, the witness steps up to the Judge and indicates same.)

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit 19.

(The document was marked "Defendant's Exhibit 19" and received in evidence.)

Q. The sales at $34.00 therefore are at or under the items of March?—A. That is right.

Q. The next item is a bed with the same figures; $32.00 indicated as the highest delivery March price in the $34.00 sale; what did you discover with respect to that?—
744 A. This has style number 2201½, whereas the previous style number is 2200½. They are the same bed, except that one—the one we are referring now to—is the 33 bed, a twin-sized bed, and the other one the full-sized, and the correct ceiling would be $32.00 based on the McIntyre delivery at $34.00.

Q. The sales check just introduced in evidence?—A. That is correct.

Mr. AUSTIN. May I have the guide card for those?

The WITNESS. I haven't any guide card. I have a photograph showing that the two beds are identical, except that one size is known as 2200½ and the other one is 2201½.

Mr. AUSTIN. There is another guide card, is there?

The WITNESS. Yes; there would be another guide card for the other bed.

Mr. AUSTIN. But there are different guide cards for 2200½ and 2201½?.

The WITNESS. That is correct. There is a different guide card. It happens in this particular factory, the manu-
745 facturer apparently designates different beds by different size, by different number, but the 33 or 46 bed would be the same.

Q. They sell all the beds at the same price?—A. That is correct.

Q. The next item is a chest-on-chest, indicating highest delivery March price at $56.95 and three sales thereafter at $60.95. What did you discover with respect to that item?—A. That the highest delivery in March was $56.95 to a customer Herman Shimmel. The sale to customer Shimmel was on February 9th, and it was delivered March 20th. There were no sales in March at any price. The last piece was sold February 24th and a new shipment in March and offered at $60.95. The first sale to customer Roberts on April 3rd, at $60.95.

Q. But the proper ceiling price in this item is $56.95?—A. That is correct.

Q. And the sales indicated are above the proper margin?—A. That is right; and the two sales listed should be $60.95.

Q. They are improperly listed on this exhibit?—A. That is correct.

746 Q. This is indicated as being listed at $60.95?—A. Yes; on page 7, line 47.

Q. The next item is a mahogany dresser with an indicated highest delivery March price at $65.00 and one sales for $76 and three for $70 thereafter. What did you discover with respect to this item?—A. The ceiling established by the government investigator was based on a sale to customer named Brown, which occurred on September 16, 1941. When the delivery was made of the various items that the customer had ordered in September 1941, the customer refused this dresser. In other words, although the dresser was tendered to him, he refused to accept it when it was offered. There were no sales in March 1942, although the offering price was $72.00.

Q. Do you have an indication of the customer's refusal to accept the delivery?—A. Yes.

(At this point, the witness looks through his documents and produces a document.)

Q. Will you indicate to the Court how you determined that?—A. This is the dresser referred to as five four one two two naught two dash two two naught six at $65.00, and de-

livery of these two pieces were made March 19th, and
747 the driver wrote here "one dresser cancelled" and gave the customer credit on March 24th for this dresser at $65.00.

Q. So there was no delivery in March of this item to Mr. Carpenter; is that correct?—A. Mr. Brown.

Q. Brown; excuse me. What did you discover with respect to the proper March—the proper ceiling price for this item, if that delivery was rejected?—A. Well, I have a sale of $72.00 on the guide card; not a sale, but an exchange on March 7th, which was offered to customer Levinson for $72.00.

Q. What document do you have to evidence that?—A. The exchange to Levinson was never consummated in March. It was offered to him three times, but apparently the customer, Levinson was never at home, but it was the highest offering in March.

Q. Will you indicate to the Court how you come to that conclusion?

(At this point, the witness steps up to the Court.)

A. Customer Levinson originally made purchase in February. Apparently there was something wrong. It
748 was damaged and so on. March 7th an exchange order was made out for this piece at $72.00, and the drivers recorded the fact that the customer was not at home on March 10th, March 11th, and March 14th.

Q. If I understand your testimony correctly, it was proffered for delivery to Mr. Brown and Mr. Levinson and was not delivered to either of them?—A. That is correct.

Q. But the highest price at which it was proffered was $72.00?—A. That is correct.

Mr. HORSKY. May I offer in evidence, your Honor, the documents to which the witness has referred as Defendant's Exhibits 20, 21, 22, 23, and 24.

(The documents were marked "Defendant's Exhibits 20, 21, 22, 23, and 24" respectively, and were received in evidence.)

Q. I notice one sale here at $76.00; did you make any investigation of whether that is a correct representation?—A. Yes; a sale was made on May 19th to customer J. T. Mahon at $76.00.

Q. That is above——A. (Interrupting.) The $72.00 ceiling; that is right.

749 Q. Was that listed at $76.00 as indicated here?—A. It was listed on page 7, line 44, at $76.00.

Q. The next item is a mahogany bed at $37.00 as the indicated March price with one sale to Wood at $39.00. Did you

make an investigation of that item?—A. Yes; this was based on the Shimmel check I referred to a few cases ago. The Shimmel sale was made on February 9th and was delivered on March 20th. I don't have the guide card here, but, according to notation, the Wood sale was cancelled on October 27th at $39.00.

Q. Is this one of the guide cards you say was being used?—A. That is correct.

Q. You have looked on the guide card?—A. Yes; I have; my notations are from the guide card.

Mr. AUSTIN. You don't know whether this article was ever taken out of the store or not?

The WITNESS. No; I can't say whether it was ever taken out of the store.

Mr. AUSTIN. It was offered to Mr. Wood at $39.00?

The WITNESS. At the time the sale was written; yes.

750 Q. The next item is an outer table with an indicated highest March delivery price of $34.95, and one sale at $39.95. What did you discover with respect to that item?—A. The highest delivery in March was $34.95 and the sale in September was at $39.95.

Q. And that was above the proper ceiling price?—A. That is right; it was listed on page 7, line 53.

Q. At $39.95?—A. Yes.

Q. The next item is a dresser at $59.00 as the highest delivery March price and sales thereafter at $63.00. What did you discover with respect to that item?—A. The ceiling at $59.00 was established on the delivery to J. T. Carpenter on March 20th. The sale to Carpenter was on February 9th. There were sales in March at $63.00. In fact, there was one sale to a customer named Fisher at $63.00 on March 26th. The delivery was supposed to be March 31st. Because of our heavy deliveries at that time, we couldn't make the deliveries on March 31st, and it wasn't delivered until April 2nd.

Q. Was that the highest delivery March price, $59.00?—A. That is correct.

751 Q. And the sales at $63.00 was above the ceiling price; that was listed?—A. That was listed; page 7, line 53.

Q. At $63.00?—A. That is right.

Q. The next item is a dresser with the highest indicated March delivery price of $60.00 and sales at $64.00; one of them without a name being indicated. What did you discover with respect to that item?—A. The ceiling was based on the sale of February 25th to customer Harter and it was delivered on March 4th at $60.00. This dresser sold in December 1941 at $64.00 and was sold on March 10th to customer Port at $64.00, but I have no higher delivery in March than the $60.00.

Q. Therefore, the $64.00 sales are above the proper ceiling price?—A. That is correct.

Q. The next item is a bed with an indicated highest price—with an indicated highest delivery March price of $32.00 and one sale at $33.00; what did you discover with respect to that item?—A. The correct ceiling is $32.00, but delivery to
752 Power at $33.00 occurred in 1941.

Q. That is, the date should be 10/22/41 instead of 10/22/42?—A. That is correct.

Q. Have you any guide card which indicate that?—A. Yes.

Q. Would you indicate to the Judge how you arrived at that conclusion?

(Witness steps up to the Judge.)

The WITNESS. This is September 1941 [indicating]; the sale of 10/22 to Power is at $32.00. That [indicating] is in 1941 and there is an entry after that, December 1941.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit Number 25.

(The document was marked "Defendant's Exhibit Number 25." and same was received in evidence.)

Q. That was listed at $32.00 in the ceiling price list?—A. That is correct; on page 1, line 31.

Q. The next item is a bed with the highest indicated delivery price of $32.00, and one sale at $34.00. What did you discover with respect to that item?—A. The highest delivery was
753 $32.00 and the Leach sale of $34.00 was cancelled. The Leach sale of May 22nd was cancelled on June 25th.

Q. Do you have the guide card?—A. Yes.

Q. Would you indicate to the Court how you determined that the sale was cancelled?

(At this point the witness steps up to the Judge.)

A. This is the entry for the Leach sale; May 22nd. Leach sold by 65—$35.00, and here [indicating] is the entry of June 25 to Leach, to indicate that the sale was cancelled. $34.00.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit Number 26.

(The document was marked "Defendant's Exhibit Number 26." and same was received in evidence.)

The COURT. That will be all. We will be back tomorrow morning at 10 o'clock.

(Adjourned at 4:05 p. m.)

758 PROCEEDINGS

(The proceedings began at 10:00 a. m.)

The COURT. I think, perhaps, we may begin.

OSCAR C WEITZBERG, a witness previously duly sworn, resumed the stand and testified further as follows:

Redirect examination, by Mr. HORSKY:

Q. At the conclusion yesterday, Mr. Weitzberg, I believe we had proceeded on Plaintiff's Exhibit 20 down to about two-thirds of the way down on the third page thereof and you had concluded your explanation of the item of the 4/6 bed at $32 and $34. The next item is a chest with an alleged highest delivered price of $65.95 and one sale thereafter at $64.95. What does your investigation reveal with respect to that item?

The COURT. What page is that?

Mr. HORSKY. Page 3 of Plaintiff's Exhibit 20, Your Honor. It is the fifth item from the bottom of the page in the left-hand margin. The purchaser's name on the left-hand margin is Corwin.

The COURT. Yes.

By Mr. HORSKY:

Q. What does your investigation reveal?—A. The sale to Corwin was made on February 10th and was originally supposed to have been delivered on February 19th. The customer was out at the time the driver was there and the
759 driver came back the following day on the 20th. The customer was out again and final arrangements were made for delivery and it was delivered in March.

Q. And that was the highest delivery?—A. That was the highest delivery; yes.

Q. And this other sale?—A. Was made on May 22nd.

Q. Was above the highest maximum price?—A. Yes.

Q. That is not indicated as either listed or not listed, Mr. Weitzberg. What did you discover with respect to that?—A. It was listed on page 7, line 23 at $64.95.

Q. Thank you. The next item is a vanity with a highest delivered March price of $50, and one sale at $54. What did you discover with respect to that item?—A. The 4/6 bed?

Q. I think you have the wrong item.—A. I am on the wrong line. You are talking about the vanity.

Q. That is right.—A. The government investigator indicated that the highest delivery to Brown was at $50. This vanity in mahogany is identical to the Prima Vera vanity
760 which has the same number—no, I am sorry—has a different number. It is 248-1560 3/4. The only difference is the type of wood. One is light modern and the other is mahogany and the highest delivery on the Prima Vera was $54 which was to Helen Fitzgibbons, March 19th.

Q. Do you have that sales check?—A. Yes.

Q. I take it, Mr. Weitzberg, that you are not sure of whether, under the appropriate regulations, this would set the ceiling price for this mahogany or not, is that right?—A. There seems to be some doubt because of the different number. Apparently in this manufacture a different style seems to indicate a different type of wood just as I testified yesterday that a different size bed was indicated by a different style number.

Mr. HORSKY. Yes; I offer this in evidence, Your Honor, as Defendant's Exhibit——

The CLERK. 27.

Mr. AUSTIN. Note our objection to that, if you please, on the grounds that it is irrelevant.

The COURT. Yes.

(The document was marked "Defendant's Exhibit 27" for identification and was received in evidence.)

761 By Mr. HORSKY:

Q. Is this item listed, Mr. Weitzberg?—A. Yes; this item was listed on page 8, line 10 at $54.

Q. The next item is a chest—excuse me—there was a sale to Mr. Dix at $54, Mr. Weitzberg.—A. What is that?

Q. There was a sale to Mr. Dix at $54 of mahogany vanity, is that correct?—A. There was a sale to Dix at $54.

Q. And your investigation indicates that it is doubtful whether that is improper or proper?—A. That is correct.

Mr. AUSTIN. May I ask Mr. Weitzberg—will you point that item out—this 248–156034 mahogany vanity?

The WITNESS. You mean that ceiling price-list?

Mr. AUSTIN. Yes.

The WITNESS. Here it is—page 8, line 10, 248–1560 3/4. The 3 of the 3/4 seems to run into the 1560.

Mr. AUSTIN. It has been changed, hasn't it?

The WITNESS. No. It might have been changed in typing.

Mr. AUSTIN. Right there.

The WITNESS. It might be 25 and it might be 15.

762 Mr. AUSTIN. I want to read it, that is all. I am not questioning it.

The WITNESS. Well, we couldn't read it either.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a chest with an alleged highest March price of $41.95 and sales thereafter at $45.95. Did you investigate that item?—A. Yes; I did.

Q. What did you find there?—A. There were no sales of this chest in March 1942. The delivery to the customer Caviness at $41.95 in March was based on a sale that occurred during August 1941, the half-yearly sale at which time it had been re-

duced to $41.95, although the regular price had been $45.95. It was carried on our books at $45.95 and was included in our January 31st inventory at that value and we paid our income taxes at that value. The last piece was sold out—no; let me see. The only record I have here is of no sales in March, although we had had it in stock.

Q. Yes; but this ceiling price is based on a sale almost six months prior to the March critical month.—A. That is correct. Our sales in February had been at $45.95, but there were no deliveries in March at $45.95 and no sales with the ex-
763 ception of this Caviness delivery which was at $45.95.

Q. Yes.

Mr. AUSTIN. Do you have the sales check of this delivery?

The WITNESS. Yes; I have.

By Mr. HORSKY:

Q. This was indicated as not listed, Mr. Weitzberg. Will you state whether that is correct or not?—A. No; it was listed on page 3, line 8.

Q. It is listed on page 3, line 8?—A. That is correct.

Mr. HORSKY. I will offer that sales check in evidence, Your Honor. Is that the only thing on that sheet, Mr. Clerk?

Mr. AUSTIN. I think there are some others.

The WITNESS. There is everything that pertains to that sheet.

The CLERK. Put the whole sheet in?

Mr. HORSKY. All right, put the sheet in. I offer that as Exhibit 28—Defendant's Exhibit 28.

(The document was marked "Defendant's Exhibit 28" for identification and was received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a hanging mirror. That has an indicated highest delivered March price of $19.95
764 and one sale at $22.95. What did your investigation reveal with respect to that item?—A. The highest delivery was $19.95 in March and, according to the guide card, there was one delivery at $22.95 to Miller. I have not been able to find the sales check to verify the guide card entry.

Q. This is indicated as not listed. Will you state whether that is correct?—A. That is correct, it was not listed.

Q. The next item is a 4/6 bed at $26 that sells thereafter at $28. What did your investigation reveal with respect to that?—A. This was also based on the same Caviness sale referred to just before—that is, the sale was made in August 1941 and delivery in March 1942.

Q. It was not delivered in March at any other price?—A.

That is correct. There were no sales in March at any price. The regular price had been $28 before the sale—in February and after March.

Q. There is a note, Mr. Weitzberg; that there was an exchange to a customer named Lyon. Do you find anything with respect to that?—A. Yes. Although there were no sales in March, there was an exchange to a customer by the name
765 of Lyon at $28 which would make it the highest delivery.

Q. Was that exchange delivered in March?—A. That is correct. It was delivered on March 21st.

Q. Do you have that order there? Show it to the Court. Again, Mr. Weitzberg; let me clarify the matter of an exchange order. When the exchange is delivered, how is the price determined? Does that mean that the price was predetermined? Does that mean that the price was predetermined by some transaction?—A. Yes; it was predetermined by the original sale.

Q. Does the guide card show this sale?—A. Yes; I will find that sale for you. I don't have the guide card for the 3/3 bed for which the line sale would indicate. I just have the guide card for the 4/6 bed.

Mr. HORSKY. I see. I offer this in evidence, Your Honor, As Defendant's Exhibit 29.

Mr. AUSTIN. Another objection to that, please.

Q. Your conclusion, Mr. Weitzberg, is that the sales were at or under the ceiling price.—A. That is correct.

Q. This is indicated as not lister. Will you state whether that is correct?—A. It was listed on page 3, line 11, at $28.

766 Mr. HORSKY. Might I ask Your Honor, for the purposes of clarification, for the government counsel to explain their objection to the sales order—insufficient evidence or whatever objection they have to it?

Mr. AUSTIN. We have our objection to the introduction of the sales check in that it is irrelevant and immaterial.

Mr. HORSKY. It shows delivery in March at $28, Mr. Austin.

The COURT. It may be received now.

(The document was marked "Defendant's Exhibit 29" for identification and was received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a bench at $11.95 with sales thereafter at $12.95 and one at $14.95. What is the result of your investigation of that item?—A. This again refers to the Caviness transaction which occurred in August 1941 where the sale was made during the half-yearly sale at a reduced price

of $11.95, but the delivery was not made until March 1942. There were no sales in March 1942 at any price. There was, however, this: it is indicated as not listed. It was listed on page 3, line 7 at $12.95.

767 Q. All right. The next item is a chest with an indicated highest March price of $25 in the right-hand column. I take it that that is concededly proper. Is that right, Mr. Austin?

Mr. AUSTIN. We are not claiming any violation on the basis of that transaction.

Mr. HORSKY. And the same with respect to the next one.

Mr. AUSTIN. That is right.

Mr. HORSKY. And the same with respect to the next one—excuse me—the next one.

Mr. AUSTIN. Yes.

By Mr. HORSKY:

Q. The next one, Mr. Weitzberg, Robert Burrows, which is listed here as a highest delivered price of $12—did you investigate that?—A. I did, sir.

Q. What did you discover?—A. I find it was Burrows, 15968–48, which is listed on this exhibit as having a delivery price of $12 and is only shown as $11 on the sales check.

Q. The proper ceiling on that should be $11.—A. That is correct.

768 Q. And the exhibit should be—is incorrect to that extent.—A. That is correct.

Q. The next item is a maple vanity with a highest indicated March delivered price of $19.95 and sales thereafter at $25.30, and they have prices at $30 and $32. Will you indicate what you discovered with respect to that?—A. The highest delivery in March was $19.95. This was sold during the half-yearly sale at the reduced price of $19.95, and then sold after the sale at the regular price.

Q. Are any of those six sales—were any of those six sales subsequently cancelled?—A. Yes; there was a sale to Haniman that was cancelled on June 2nd. There was a sale to Karookum which was cancelled on August 20th, and there was a sale to Shelly which was cancelled on October 20th.

Q. The next item is a chistrobe. I guess it states with an indicated highest delivered March price of $18, and one sale thereafter at $39.95. What did you discover with respect to that?—A. The delivery to Olson was based on a sale that occurred on January 8, 1942, and at the customer's request was held for him and delivered on March 3, 1942. The last piece of that Chistrobe was sold on January 20th. There was no

stock of this merchandise during the period January until May when one piece came in.

769 I cannot tell whether it was returned from the customer. No; this came from the manufacturer. It was marked $39.95 and sold at that price on May 29th.

Q. This is indicated as not listed, Mr. Weitzberg; is that correct?—A. That is correct.

Q. How about the previous one about which I did not ask you? Was that listed?—A. That was listed. It was listed on page 13, line 1.

Q. At what price, Mr. Weitzberg?—A. What?

Q. At what price was it listed?—A. The previous one or this one?

Q. The maple vanity.—A. At $32.

Q. The next item, Mr. Weitzberg, is a 4 6 bed with an indicated highest delivered March price of $11, and one sale thereafter—two sales thereafter at $12. What did you discover with respect to that item?—A. The highest delivery was $11 to a customer Macosh. The last piece was sold to a customer Macosh. In April—April 11th, to be exact, the customer returned the piece. It was then sold on June 24th to a customer

770 West for $12, and is listed as one of the violations. This sale was cancelled by West on August 27th and then was sold to customer Halse for $12, so that one piece shows two violations.

Q. I see. The next item is a dresser at $24 with an indicated sale thereafter at $26. What did you discover with respect to that one?—A. This is a duplication of a previous line. I believe it is on page 2—it occurs on page 3. It is the third name down—Chapman.

Q. The same item?—A. Yes.

Q. All the way across?—A. That is correct.

Q. The sale is the same in the right-hand column as well?—A. That is right. The whole item is duplicated.

Q. The next item is a buffet with an indicated March price of $65 and three sales thereafter at $68. What did you discover with respect to that item?—A. The delivery to Gould is based on a sale on February and delivered on March 3rd. There were sales at $68 although there were no deliveries until April.

Q. And the items are above the highest price?—

771 A. That is correct.

Q. The next item is a dining room table at $45.95 and sales thereafter at $48.95. What did you discover with respect to that?—A. According to the guide card and the sales tissue I have here there was a sale at $48.95 to a customer by the name—excuse me—the sales tissue indicates that the delivery

was promised for March 24th, but I cannot find the sales check.

Q. Have you the tissue there?—A. Yes.

Q. Can you show the Court how you determine that?—A. There is the date here. The date is the date we promised to deliver to the customer, and this is a carbon copy of the original sales check and the delivery of that check.

Mr. HORSKY. I will offer the tissue in evidence, Your Honor, as Defendant's Exhibit 30.

By Mr. HORSKY:

Q. Your conclusion, Mr. Weitzberg, is that you just are not able to determine whether this was delivered or not.—A. That is correct.

771A Q. And it may or may not be establishing a ceiling price.—A. That is correct.

Q. If it does, the sales are at the ceiling price, is that correct, sir?—A. That is correct.

Mr. AUSTIN. Just a moment. May I see that?

(Discussion off the record.)

Q. This is indicated as listed, Mr. Weitzberg, at $46.95, is that correct?—A. $48.95 on page 9, line 22.

Q. Now——

Mr. AUSTIN. Just a minute, Mr. Horsky, please. If the Court Please, for the purposes of the record, if Defendant's Exhibit 30 is introduced for the purpose of attempting to show delivery in March of this item, we object to it on the grounds that it does not prove that it was delivered in March and that it is irrelevant and immaterial as proof of that fact.

Mr. HORSKY. Your Honor, this is introduced solely as indicating the best facts we can find with respect to that item. It is not introduced as conclusive proof because it is not conclusive and does not show conclusively when it was delivered.

772 The COURT. It may be received.

(The tissue was marked "Defendant's Exhibit 30" for identification and was received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a buffet at $56 and an indicated sale to Thomas at $59. What did you discover with respect to that item?—A. The highest delivery in March was $56, and the guide card shows one sale to customer Thomas at $59, although I have not been able to get the sales check to establish that that was the correct price on the sales check.

Q. If it is correct, the sale was above the highest price?—A. That is correct.

Q. The next item, I notice, has nothing in the right-hand

column, and I assume, Mr. Austin, that that is not alleged to be a violation.

Mr. AUSTIN. That is right.

Mr. HORSKY. The next item is the sower mahogany. That is the same.

Mr. AUSTIN. The same.

Mr. HORSKY. And the next?

Mr. AUSTIN. The same.

773 Mr. HORSKY. And the next?

Mr. AUSTIN. The same.

Mr. HORSKY. And the next, the mahogany table?

Mr. AUSTIN. Insofar as the price relationship is concerned, yes.

By Mr. HORSKY:

Q. The next item is a side chair with a March price of $7 and a sale or sales thereafter at $8. What did you discover with respect to that item?—A. The delivery to customer Beatrice Cohen at $7 was based on a sale on February 7th. It was originally a will-call sale.

Q. What sale?—A. Will call.

Q. Yes.—A. And she later asked to have it transferred to her account, which was done on February 11th. Originally the delivery was supposed to be on February 26th, but was later changed to March 3rd.

Q. That is the highest delivery March price?—A. That is correct.

Q. And do you find anything with respect to these items listed as sales at $8?—A. Yes; one of the items listed to customer Grier.

774 Q. Is that about the fourth item down?—A. That is right.

Q. June 12th?—A. That is right.

Q. Yes.—A. Allegedly sold at $8. The guide card shows a sale at $7.

Q. That is not, then, a price violation?—A. That is correct.

Mr. AUSTIN. Do you have the sales check?

The WITNESS. No; I don't.

Mr. HORSKY. I will put the guide card in evidence, Your Honor, as Defendant's Exhibit 31.

(The guide card was marked "Defendant's Exhibit 31" for identification and was received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a China closet from Miss Cohen at $35 in March with sales thereafter at $39. What did you discover with respect to that?—A. This again refers

to the Beatrice Cohen transaction that I just discussed where the sale was made in February but delivery did not occur until March. This was sold during our half-yearly sale at $35. The regular price was $39.

775 Q. Thirty-five dollars is the highest delivered March price?—A. That is right—there were none sold during March although they were offered at $39 during March.

Q. The next item is an armchair at $8 with sales thereafter at $9 to Miss Beatrice Cohen. Is that still the same transaction?—A. That is right.

Q. And that is the highest delivery price in March?—A. That is correct.

Q. The last item, Mr. Weitzberg, is a dining room suite, five pieces, at $34.96 with sales thereafter at $39.95. What did you discover with respect to that item?—A. The ceiling was based on a sale to a customer Slaughter on February 13th. Original delivery was supposed to be on February 28th, but the customer was not at home. It was delivered on March 2nd. The last piece of this item was sold on August 31st.

Subsequent to the date of this last sale a number of returns were made by customers and they were sold at $39.95. The error might have been made by being confused with another style number which was similar to it—538 $\frac{1052}{1053}$ which is a similar chair and a refractory table instead of an extension table.

776 Q. This is indicated as not listed, Mr. Weitzberg, is that correct?—A. That is correct; it was not listed.

Q. Do you have any further questions with respect to that exhibit, Mr. Austin?

Mr. AUSTIN. I believe not. Mr. Weitzberg, I hand you Plaintiff's Exhibit 21 entitled "Schedule of March Sales," et cetera. Have you investigated this exhibit?—A. Yes; I have.

Q. What did you discover with respect to it?—A. I find that this is a duplication of some of the items we just discussed on Plaintiff's Schedule No. 20.

Q. Exhibit No 20.—A. What? Oh, yes; Exhibit No. 20.

Q. Could you indicate to the Court where those items appear on the previous schedule so the government counsel will have the record?—A. Yes. May I see that, please?

(The Clerk hands the document to the witness.)

Q. The duplication—the first line of this Exhibit No. 21 is duplicated on page 3.

Mr. AUSTIN. If the Court please, Plaintiff will admit
777 that these items are duplications in that they are recited in Plaintiff's Exhibit 20.

For the purposes of the record I wish to state that the purpose of this exhibit is not alone to show sales in excess of the March price but to show that the defendant sold commodities after May 18th at prices in excess of his own established and published ceiling price. The items are identical with those that appear on the previous exhibit.

The COURT. I assume there is no question about that.

Q. That is right. As to the duplication, Mr. Weitzberg, that need not be further pointed out. Did you investigate the prices on this exhibit—the listed ceiling prices to see whether they were correct?—A. Yes; the second line referring to the dining room table No. 171, 151–3.

Q. Yes.—A. It is indicated on this exhibit as being $46.95 and is listed as $48.95.

Q. Therefore these sales were not above the listed ceiling price.—A. That is correct.

Q. Will you indicate where that is listed, Mr. Weitzberg?

778 Mr. AUSTIN. Speak so the reporter can hear you.

A. Yes; it appears on page 9, line 22—171–151–3, $48.95.

Q. In other words, the person who prepared this exhibit incorrectly copied this ceiling price for this item.—A. That is correct.

Q. The price on the first item is correctly stated—the ceiling price.—A. No; it appears on our schedule at $64.95 on page 7, line 23.

Q. Again with respect to this item, the person who submitted or prepared this schedule incorrectly copied the ceiling price for this item.—A. That is correct.

Q. So that for the purpose for which the item is offered, it proves nothing. It is completely disproved by the ceiling price book.

Mr. AUSTIN. I will object to that.

Mr. HORSKY. I will withdraw the question, sorry.

By Mr. HORSKY:

Q. Mr. Weitzberg, I hand you Plaintiff's Exhibit 22. I think that has been testified to, Your Honor. I will withdraw that.

I hand you Plaintiff's Exhibit 23 entitled "Items not
779 sold in March but sold at a higher price after May 18, 1942, than on submitted ceiling price-list." Have you investigated that exhibit, Mr. Weitzberg?—A. Yes; I have.

Q. What did you discover with respect to the first item, which is a walnut veneered table?—A. May I refer to my notes, please?

Q. Surely.—A. The correct ceiling is $46.95.

The COURT. I did not understand you.

A. I said the correct ceiling is $46.95.

Q. Do you know how many sales there were at $46.95?—A. There was one sale at that price.

Q. What did you discover with respect to the next item, Mr. Weitzberg?—A. The correct ceiling is $36. There were no sales at $38. There was a sale on June 19th to Magruder which was at $30, not $38.

Q. Does the guide card show a $38 sale?—A. Well, it might be construed to read at $38.

Q. Will you show it to the Court, please.—A. Yes. This is the one that appears to be $38.

Q. Do you have the sales check for that sale?—A. Yes; I have the sales check for that sale.

780 Q. And the price?—A. Thirty dollars.

Mr. HORSKY. I offer this in evidence, Your Honor, as Defendant's Exhibits 31 and 32.

The CLERK. Thirty-two and 33.

Mr. HORSKY. Thirty-two and 33, sorry.

(The documents were marked "Defendant's Exhibits 32 and 33" for identification and were received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a bench listed as an original sale at $12.95 and subsequent sale at $14.95. What did you discover with respect to that item?—A. This is a duplication of one of the items on Exhibit 20.

Q. Is the ceiling price correctly stated at $12.95?—A. I will have to refer to that exhibit. The correct ceiling price is $11.95.

Q. Is it listed in the exhibit at $11.95?—A. No; this again refers to the Caviness sales check which was in August 1941 but delivery was in 1942.

Mr. AUSTIN. Now, I don't understand, if the Court please, what the witness is testifying to about this ceiling price.

781 Mr. HORSKY. I don't either, Mr. Austin. I want to clarify it.

Mr. AUSTIN. In other words, whether he is testifying as to whether this is the listed ceiling price or not.

Mr. HORSKY. Yes; that is what I want to clear up.

By Mr. HORSKY:

Q. What is the listed ceiling price, Mr. Weitzberg?—A. $12.95.

Q. And you say it should be $11.95?—A. That is correct.

Q. And this is one of the items that appears on Plaintiff's Exhibit 20.—A. That is correct.

Q. The next item, Mr. Weitzberg, is a bench with sales at $17.95 and a ceiling price listed at $14.95. What did you discover with respect to that?—A. The correct ceiling price is $17.95.

Q. Well, is it listed in our book at $14.95 or $17.95?—A. I will have to check that.

Q. I refer you, Mr. Weitzberg, to page 7, line 36. Is that the item?—A. That is right.

Q. And it is listed at $14.95, is that right?—A. It is listed at $14.95.

782 Q. You stated the correct ceiling price was $17.95.—A. That is correct.

Q. Will you indicate on what basis you reached that result?—A. There were no sales or deliveries during March. We had one piece in stock during March 1942, and we owned that piece at $17.95, which is indicated on this card.

Q. Would that mean, Mr. Weitzberg, that that was the price ticket in March?—A. Yes; that was the price ticket in March and that is the price at which we owned it on the guide card.

Q. Clarify what you mean by the price at which you owned it. What does that mean with respect to the price which would be on the merchandise which would be offered to the public.—A. Well, there is nothing here to indicate definitely the actual price tag that we had on the merchandise during March except that the guide card shows that in August 1941 the merchandise was marked at $17.95 and apparently had been offered at that price all the way through.

Q. The exhibit indicates that the original—which I assume is the price on the confirmation—is $14.95. Does it show that—the guide card too?—A. There is no confirmation number here. The original retail, according to the guide

783 card, was at $15.95 in 1941—July 1941. Apparently sometime during the half-yearly sale in 1941 it was marked at $17.95.

Q. And it continued at that price?—A. And it continued at that price.

Mr. Horsky. I offer that card in evidence, Your Honor, as Defendant's Exhibit 34.

(The card was marked "Defendant's Exhibit 34" for identification and was received in evidence.)

784 Q. The next item, Mr. Weitzberg, is a maple chest with an—with no original price indicated, with a subsequent price of $15.00, and a ceiling price of $24.00. What did you discover with respect to that?—A. We don't have a Style No. 745-8.

Q. You have not been able to check it?—A. No; I have not been able to check it.

Q. But there is some error in the exhibit identifying the style?—A. That is correct.

Mr. AUSTIN. I object.

Mr. HORSKY. I withdraw the question, and will rephrase it, your Honor.

By Mr. HORSKY:

Q. There is no Style No. 745–8 in this department?—A. That is correct. There is no Style No. 745–8.

Q. The next item, Mr. Weitzberg, is a vanity with a ceiling price of $23.95, and various sales, one at $26.95, one at $21.00; and one at $25.00. What did you discover with respect to that?—A. The item marked originally $18.00 is incorrect. It was originally brought in at $20.00 and not $18.00.

Q. What do you have to indicate that?—A. The guide card itself which would indicate it was brought in for $20.00,
785 and a mark-down taken on June 16 to $18.00, and then a cancellation of mark-down taken on June 20 back to $20.00.

Q. Is it listed in the ceiling price at $23.95?—A. That is correct. It is listed at $23.95.

Q. Is that the proper ceiling price?—A. No; it has been rechecked, and it is now established on a proper comparison. Apparently it was compared originally with something that didn't have delivery in March, so we had to compare it with something on which there was delivery in March, and a new comparison is at $28.95.

Mr. AUSTIN. What was the ceiling price as listed on the ceiling price list?

The WITNESS. $23.85.

Mr. HORSKY. I offer the guide card in evidence, your Honor, as Defendant's Exhibit 35.

(The document was marked "Defendant's Exhibit 35" and received in evidence.)

By Mr. HORSKY:

Q. Do we need both of them, Mr. Weitzberg?—A. I don't think so. The first one will be sufficient. I will take this one back. All we want is the original.

Q. The next item, Mr. Weitzberg, is a dresser, ceiling price listed at $23.95, and subsequently sold at $26.95. What did you discover with respect to that?—A. This is the
786 matching dresser, matching vanity, listed now 8.002. The explanation is exactly the same.

Q. It is listed at $23.95?—A. It is listed at $23.95, but it is now established at $28.95.

Q. The next item is a bed with a ceiling price list indicated at $13.00 and a sale of $14.00. What did you discover with respect to that?—A. The correct ceiling is $13.00, and there was one sale at $14.00.

Q. The next item is a vanity with a ceiling price indicated at $31.00, and the subsequent sale at $25.00.

Mr. HORSKY. May I ask Counsel, your Honor, since that does not comply with the title whether that item should properly be on this exhibit. That is these sales are not above the listed ceiling price.

Mr. AUSTIN. Apparently not.

Mr. HORSKY. That may be stricken off?

Mr. AUSTIN. Yes.

Mr. HORSKY. And is the same true of the next item?

Mr. AUSTIN. Yes.

By Mr. HORSKY:

Q. Mr. Weitzberg, I hand you Plaintiff's Exhibit 24 and ask you if you investigated that exhibit. This exhibit, your Honor, is entitled "New Merchandise Sold in March Appearing On Ceiling Price List At A Higher Price Than Early Sales
787 of Item." The first item Mr. Weitzberg, is a vanity with the original sale at $58.00 and the subsequent sale at $68.00, with an indicated ceiling price at $72.00. What did you discover with respect to that item?—A. There seems to be some doubt as to the correct way to establish the ceiling price on this. This is an odd mirror.

Q. It is listed as a vanity.—A. I am sorry. It is a vanity with an odd mirror. That is not the original mirror, and it was assembled from these two pieces. It was transferred from one piece of stock, the vanity was, and the mirror from another piece of stock, and matched as an odd piece. It was not assembled until August 1942, and the piece from which it was assembled was not sold during March 1942, but was offered during March 1942. The guide card shows that it was held at $68.00, although the buyer remembers tagging it at $72.00. Of course, there is nothing to substantiate the $72.00 so the highest would be $68.00.

Q. The guide card indicates the $68.00 price in March; is that correct?—A. That is right.

Q. And $68.00 would be, so far as you can determine, the proper ceiling price?—A. That is correct.

Q. Would you indicate from the guide card, Mr. Weitzberg,

to the Court where the $68.00 figure appears?—
788 A. This is the guide card that is referred to in Exhibit 24. There is no sales marked, but this shows how the merchandise was assembled in August 1942, and subsequently sold at $68.00.

Mr. HORSKY. I offer that in evidence, Your Honor, as Defendant's Exhibit 36.

(The document was marked "Defendant's Exhibit 36" and received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a 4×6 bed with an original sale indicated at $9.05, subsequent sale at $13.00, and ceiling price at $13.00. What did you discover with respect to that item?—A. The correct ceiling price is $13.00.

Q. Based on what? I will have to ask you to indicate upon what document you have that based.—A. It is duplicated on another schedule, I believe, and I have got to go back to the other schedule. It is duplicated on Schedule 23.

Q. Exhibit 23?—A. Exhibit 23, and it is the eighth item.

Q. And the $13.00 price was—ceiling price was based on what documentary evidence? It is listed there at $13.00; is that right?—A. That is correct.

789 Q. In our price book?—A. That is correct, at $13.00.

Q. Do you know upon what basis the $13.00 price is set as the ceiling price?—A. OPA 7 was filed in the OPA office on August 10—sometime before October 10, and was compared with Factory 746, Style No. 122 bed.

Q. You arrived at the ceiling price of $13.00?—A. That is correct.

Q. Thank you. The next item, Mr. Weitzberg, is a buffet with an original indicated price of $24.95, sales thereafter at $26.88, and a ceiling price of $29.95. What did you discover with respect to that item?—A. The original retail was not $24.95, but $29.95 on the confirmation. I have in my hand Confirmation No. 5880, and the retail is indicated at $29.95 and not at $24.95 as is shown on the exhibit.

Q. In other words, the original column should be corrected to $29.95?—A. That is correct.

Q. I notice, Mr. Weitzberg, that the next item is also the next style number, and indicated on the same receiving date at the same original price. Should that also be corrected?—A. That is correct. It should be corrected at $29.95.

Q. Would you indicate to the Court where you find it on that?—A. Yes; this is Style No. 10 buffet, and this is
790 the retail as indicated in this column, $29.95, and this is the hutch, Style No. 11, and is indicated at $29.95.

Mr. HORSKY. I offer that in evidence, your Honor, as Defendant's Exhibit 37.

(The document was marked "Defendant's Exhibit No. 37" and received in evidence.)

The COURT. We will suspend for a five-minute recess. (Recess.)

By Mr. HORSKY:

Q. Before the recess, Mr. Weitzberg, I believe you testified that the exhibit should be corrected to indicate $29.95 as the original price for the buffet and hutch. What did you discover with respect to the ceiling price of that item?—A. The correct ceiling price is $29.95, and was so listed, and the price was arrived at by filing an OPA 7 and making comparison with an item that was delivered in March.

Q. Do you have the item with which it was compared?—A. Yes.

Q. If you don't have it, Mr. Weitzberg——A. It may be in the other schedule. Some of these items are listed on more than one schedule. It happens that the evidence may be in the other schedule.

Q. I don't want to take much time on each of these items.—A. Well, it was correctly established and a comparison made.

Q. All right. Is that equally true of the buffet and hutch? Is the explanation the same for both of these two items?—A. Yes; the explanation would be the same.

Mr. AUSTIN. Do you have the guide card for those two, Mr. Weitzberg?

The WITNESS. My filing system has broken down. Apparently not.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a chest with a ceiling price indicated at $23.00 and various sales some at and some below that figure. What did you discover with respect to that item?—A. I think this is a duplication, too. I will check that. No; it is not a duplication. The price of $18.95 which is marked on the original is not correct. It was originally marked $19.95 instead.

Q. Instead of $18.95?—A. That is correct.

Q. What accounts for——

Mr. AUSTIN. Just a moment now if I may interpose here. Now, are you taking that from the guide card or the confirmation?

The WITNESS. I am taking it from the—I have the confirmation.

791

Mr. AUSTIN. All right. I just wanted to make sure that you were testifying each time from the same source. You had the guide cards in your hand. That is all. I just wanted to find out.

792 The WITNESS. It was easier for me to refer to it because it is indicated on the guide card and the place marked original retail.

Mr. HORSKY. I will offer the confirmation in evidence, Your Honor, and the guide card, as Defendant's Exhibits 38 and 39.

(The document was marked "Defendant's Exhibits 38 and 39" and received in evidence.)

Mr. AUSTIN. May I see the guide card, Mr. Clerk? Isn't the first sale on that guide card at $18.95?

The WITNESS. The first sale?

Mr. AUSTIN. Yes.

The WITNESS. As I understood the original referred to the original price. It wasn't that on the previous item on the schedule because there was no original sale at—for $58.00 on that item.

Mr. AUSTIN. On this guide card the original sale is $18.95, is it not?

The WITNESS. That is correct.

Mr. HORSKY. May I ask of Counsel, your Honor, what the original is supposed to indicate on the schedule so we will be clear on the explanation to the Court.

Mr. AUSTIN. Well, it indicates the original sale.

Mr. HORSKY. The first sale?

Mr. AUSTIN. Actual sale, yes; on the guide card.

By Mr. HORSKY:

793 Q. Well; will you go back, Mr. Weitzberg, to the first item where we checked that, and with that explanation in mind will you indicate to the Court whether the $58.00 figure is correct on the first item as the first sale?—A. I will have to see that exhibit. The very first line the 525–83 vanity?

Q. Yes.—A. The first sale is $68.00.

Q. So the original should be corrected to $68.00 rather than $58.00?—A. That is right.

Q. The next item is a bed with an indicated first sale at $9.05, is that correct?—A. I will have to check back. In this case the first sale is $9.05.

Q. All right.—A. I have the guide card for the buffet and hutch.

Q. The first sale on those is at what price, Mr. Weitzberg?—A. The first sale on the buffet is $29.95.

Q. $29.95 instead of $24.95?—A. That is correct.

Q. And on the hutch is what?—A. $29.95.

Q. Instead of $24.95?—A. That is correct.

794 Q. Now, the first sale on the chest about which you were testifying is actually $18.95, you say, as indicated on the exhibit?—A. Yes; the first sale is $18.95.

Q. All right. What did you discover with respect to the ceiling price of that item, Mr. Weitzberg, or have I asked that question already?—A. The ceiling price is $23.00, and is so listed in our ceiling price book.

Q. Do you know on what basis that price was established?—A. This was 8.001?

Q. That is right.—A. It was compared on OPA 7, and compared with 746. Line 107. The ceiling price of both was $23.00.

Q. $23.00?—A. Yes.

Mr. HORSKY. Thank you. That is all.

Re-cross-examination by Mr. AUSTIN:

Q. This guide card, Mr. Weitzberg, shows that this merchandise was received when?—A. On June 4.

Q. And the OPA 7 showing when the comparison was made indicates what date?—A. The comparison was made on September 26.

795 Q. And will you look at that guide card and tell us how many sales of that item took place between the time it was received and the OPA 7 was made out?—A. I have 49 through July 24.

Q. In other words, this item—there was 49 sales of this item before the OPA 7 was made out?—A. At least 49.

Q. Will you go through those guide cards again and tell us how many different prices that commodity was sold for over that period of time?—A. Well, it was sold at $18.95, $21.06, $21.00, $19.95, $18.00, $21.00, $13.00.

Q. In other words, it was sold—— A. And $23.00.

Q. In other words, it was sold at a least a half a dozen different prices from the time it was received and the time the ceiling price was established on it?—A. That is correct.

Mr. AUSTIN. That is all.

Redirect examination by Mr. HORSKY:

Q. This is a promotional piece, Mr. Weitzberg?—A. I would so presume from the information on the guide card.

796 Q. It was never sold above ceiling price?—A. No; I have no record of any sales above that, above $23.00.

Q. The next item, Mr. Weitzberg, is a maple chest with indicated original sale of $25.00, a ceiling price of $24.00, and sales

at prices ranging from $13.00 to $22.95. What did you discover with respect to that item?—A. 8,008?

Q. That is right.—A. The original price was $25.00. The original sale was $25.00, and the ceiling price was originally made at $24.00. Apparently this was not a correct comparison because a comparison was made with an item which was not delivered in March, so a new comparison would have to be made, and the new comparison is with a similar item, the ceiling price of which was $27.00.

Q. Do you have the style number of that item?—A. The new item?

Q. Yes.—A. I'd have to look at some of the new ceiling price books.

Mr. HORSKY. I don't think unless Counsellor wishes that I will press that question.

Mr. AUSTIN. No; I just wanted—will you bring out, Mr. Horsky, whether this $24.00 is the ceiling price or whether it now appears at $27.00?

Mr. HORSKY. Yes.

797 By Mr. HORSKY:

Q. The $24.00 is the ceiling price in the book that you have as appears in Government Exhibit 19?—A. That is correct.

Q. And it now has been repriced at $27.00?—A. That is correct.

Q. Would your conclusion be that that was a piece similar to the previous piece in that respect?—A. Yes; it is a companion piece and apparently was promoted at the same time.

Q. The next item, Mr. Weitzberg, is a maple vanity with a first sale at $25.00, a subsequent sale of $26.05, and ceiling price of $31.00. What did you discover with respect to that item?—A. It was originally brought in at $31.00 on the confirmation.

Q. What was the first sale?—A. The first sale was at $25.00.

Q. And the ceiling price is listed at $31.00. How was that established, do you know?—A. By a comparison with an item that was delivered in March. This is a duplication of one of the items on the previous exhibit.

Q. This is one of the items that was scratched off the
798 previous exhibit, is that right?—A. I think so; yes.

Q. It is the next to the last item on the previous exhibit.—A. It is the next to the last item, and the same thing would be true of the next, No. 8403.

Q. With respect to that next number, 8403, the maple dresser, the first sale is indicated at $31.00, and the ceiling price at $31.00, and the sale price is lower than that. Do you know—

did you find out whether the $31.00 is the first sale, and whether the—how the ceiling price was established?—A. It was brought in for $31.00, and the first sale occurred on September 30, $31.00.

Q. The ceiling price was——A. The ceiling price was based, on a comparison with an item that was delivered in March at $31.00.

Mr. HORSKY. That is all.

Re-cross-examination by Mr. AUSTIN:

Q. Do you have those guide cards, Mr. Weitzberg?—A. Yes. 8403?

Q. 8403 and 8402. Do you have the OPA 7 for these?—A. I think so. 8403?

Q. 8402.—A. This is 8402.

799 Q. What is the date of that OPA 7?—A. September 2.

Q. And what is this date over here?—A. That is September 2.

Q. That is for——A. 8402.

Q. 8402?—A. Compared with Style No. 4338 from Williams Furniture.

Q. When was this merchandise brought in?—A. The merchandise was received on September 8.

Q. In other words the OPA 7 was made out before you got the merchandise, is that right?—A. Apparently.

Q. How does—does that same apply to 8403?—A. Yes; they were made out at the same time. They refer to the same confirmation.

Q. Do you know whether Mr. Singer made these comparisons on the dates that appear here?—A. Well; apparently, because this was—if the date—this is the date he made it out, about the time he made out his confirmation. It was sent back to the OPA office, and they stamped on it September 4; this date over here indicates the date that the Price Control Office, rather, registered the item.

Mr. AUSTIN. That is all.

Redirect examination by Mr. HORSKY:

800 Q. The next item, Mr. Weitzberg, is 8404, which is listed the first sale at $14.00, and ceiling price at $17.00. What did you discover with respect to that item?—A. This was brought in at $17.00, and the mark-down was taken. The first sale was at $14.00 on September 30.

Q. Do you know how the $17.00 ceiling price was established?—A. When OPA 7 was made on September 2 at the same time as the other two OPA 7's, it was compared with William Furniture Bed No. 4322.

Q. This is a matching piece to the previous item, I take it.—A. That is right.

Q. The next item, Mr. Weitzberg, is a desk chest with the first sale at $32.00, and the ceiling price at that same figure with a sale at $19.00. What did you discover with respect to that item?—A. This item was brought in at $32.00. The first sale occurred on September 23 at $32.00. The next sale was at $32.00, and the mark-down was taken and sold at $19.00 thereafter and not at $14.00. There are no sales at $14.00.

Q. There is no $14.00 sale indicated on the exhibit as far as I can see.—A. I think I have the wrong line $32.00.

801 Q. This is the desk chest 8414.—A. Yes, sir; there was a $19.00 sale which is correct.

Q. How was the ceiling price established?—A. By comparison with an item that was delivered in March.

Q. Do you have the OPA 7 to indicate what the comparison was?—A. It was compared with a 7608 desk chest from Williams Furniture Company.

Q. Thank you. The next item is a secretary chest with the first sale at $35.00, ceiling price at $40.00, and an indicated sale after the first sale of $19.00. What did you discover with respect to that item?—A. This was originally brought in at $40.00. It was so shown on the confirmation. It was reduced after it came in, and the first sale was at $35.00 and subsequent sales were $19.00. This was a promotional piece, and it sold together with these other pieces.

Q. How was the $40.00 ceiling established?—A. On the basis of an OPA 7.

Q. Compared with what, Mr. Weitzberg?—A. This was compared with a 6816 maple chest from Sun Glow, and the ceiling price there was $40.00.

Q. Thank you. The last item on this exhibit is a maple chest with the first sale at $13.95, subsequent sales at $23.95. What did you discover with respect to this item?—

802 A. The correct ceiling is $23.00.

Q. Based on what, Mr. Weitzberg?—A. Based on an OPA 7. The OPA 7 was made out subsequent to the ceilings that were placed on this old type ceiling price book. It is now listed on our new type ceiling price book.

Q. You don't have the OPA 7 with you?—A. No.

Q. This item then was sold at $13.95 prior to the time that a price was established on it?—A. That is right. In fact, before the merchandise was received I'd say from this guide card.

Mr. AUSTIN. What do you say the ceiling price is, Mr. Weitzberg?—

The WITNESS. $23.00. There was one sale at $23.95.

Mr. AUSTIN. Do you know when that ceiling price was established?

The WITNESS. I can't say offhand. I'd have to refer to the OPA 7.

Mr. HORSKY. Your Honor, that concludes this particular department so far as Mr. Weitzberg is concerned. Unless Government counsel wishes to examine him further at this time, I'd like to withdraw Mr. Weitzberg and start another department.

Mr. AUSTIN. Just one or two questions.

Re-cross-examination by Mr. AUSTIN:

803 Q. There was one thing Mr. Etelson said you would answer, I think, Mr. Weitzberg, and that is how these sales checks in the service department are kept. Will you tell us about that?—A. Yes; I am familiar with that. After the merchandise has been delivered to a customer, the driver brings back to the warehouse the delivery sales check with the customer's signature on it to indicate that the customer has received the merchandise in good condition.

Q. Let me interrupt. Those are the yellow sales checks which have been going into evidence with the delivery date marked in red across there?—A. That is correct. Then the delivery checks are sent to the Adjustment Bureau at the store with—where they are filed alphabetically. The general procedure for filing is to start a new series of filing on January 1 of each year, and the file would contain all the sales checks from January 1 to December 31, at which time a new set of files would be started.

Q. And that file includes the sales checks for these four departments, does it, these furniture departments?—A. That is correct; 59, 69, 76, and 60.

Mr. AUSTIN. That is all.

Redirect examination by Mr. HORSKY:

804 Q. For further clarification of that, Mr. Weitzberg, some of these sales checks have sales from each of those departments on the same check, do they not?—A. That statement is correct with respect to Department 59, 69, and 76, and those are generally written on a 59 Department sales check. That is, the sales check is printed with the red numeral 59. 60 Department, however, has its own sales check, and that is indicated by a numeral 60 appearing thereon.

Q. What purpose do these sales checks serve in the—what do you call it—Adjustment Bureau?—A. That is correct.

Q. What are they kept there for ordinarily?—A. They are

kept there to enable the store to take care of customer's complaints. In other words, there might be a question of delivery. One of the ways that we can establish it quickly would be to refer to those sales checks, or a piece of merchandise may be damaged, and we are in a position to write out a repair order to send someone out to repair the furniture, or if the customer wants a piece exchanged, if we have the sales check, why the exchange order would be written from the sales check, and in absence, of course, of the sales check, an exchange order would be written up from information obtained from telephone from the warehouse.

Q. Well, I take it from what you say that the file is currently in use all the time for store purposes; is that correct?—A. That is correct. It is in use at all times. In other
805 words, there are dozens of girls downstairs who handle these checks, and the same check might be down there, might be in someone's file for weeks at a time before the matter is satisfactorily concluded, and it would be very difficult to establish where the sales check is.

Q. The checks are physically removed when a question arises with respect to that item?—A. That is correct.

Q. Where would they be put? I mean where does the person who removes it, takes it away—what is the physical set-up of that adjustment?—A. Takes it to her desk or to his desk to work at it.

Q. How many people are in that bureau; do you know?—A. I'd say at least 20 people.

Q. At least 20 people?—A. In the entire bureau; yes. Not all of them, of course, work on furniture department checks, but in the course of handling, there might be—they might all have recourse to using those checks.

Q. Any one of them might handle the furniture complaint?—A. That is correct.

Mr. HORSKY. That is all.

Re-cross-examination by Mr. AUSTIN:

Q. One more question, Mr. Weitzberg, and I am de-
806 pending partially on my recollection for this. Isn't it true that in these four departments there have been since the 1st of January 1942, to November 1 somewhere between 55,000 and 60,000 transactions?—A. I'd have to check my records to verify that.

Mr. HORSKY. Could you say whether that would be possibly correct?

The WITNESS. It might be that would be possibly correct.

By Mr. AUSTIN:

Q. I base my figures on what I believe you told us on another occasion. You broke down the figures for the various departments.—A. I don't recall whether we took it from January 1 to November 1, or whether we took it from May 18 or March 31.

Q. Well, my recollection is——A. I could check those figures and have more accurate information concerning the exact number of transactions in the aforementioned departments.

Mr. HORSKY. Would you care to have Mr. Weitzberg get the figure, Mr. Austin?

Mr. AUSTIN. Yes, I would like to have the transactions from January 1 approximately to November 1.

Mr. HORSKY. When you say transactions you mean number of sales checks?

Mr. AUSTIN. Number of sales checks appearing in the file for the service department.

807 The WITNESS. The only way to get it the way you would want it—you say number of sales checks appearing in the file. We'd have to physically take the sales checks and count them. We do have records, however, of the daily transactions by department.

By Mr. AUSTIN:

Q. Well, what would be the difference?—A. Which is part of our statistical records.

Q. What would be the different between the result you would get from those records and the physical count of the sales checks?—A. There is a question of time. There is a time element. I mean if you want an answer, we maybe would have to stop someone and actually go through the sales checks and make sure they don't have any that are dated subsequent to——

Q. I don't want you to do that either. Would the result be the same?—A. I'd say substantially the same.

Q. Approximately? That is all we need is an approximate number.—A. Yes.

Mr. AUSTIN. That is all.

Mr. HORSKY. That is all, Mr. Weitzberg. [Witness excused.]

The COURT. I think we will recess now until 1:30. (Court was recessed at 12:20 p. m.)

808 (Proceedings resumed at 1:30 P. M.)

Mr. HORSKY. Mr. Weitzberg will be recalled.

The Government's counsel wishes to ask him about some figures. He has the figures.

OSCAR C. WEITZBERG, the witness on the stand at the time of taking the noon recess, resumed the stand and testified further as follows:

Redirect examination by Mr. HORSKY:

Q. Mr. Weitzberg, have you the figures which Mr. Austin requested of you?—A. Yes; the total transactions for the period from January 1st to October 31st, 1942 for Departments 59, 69, 76, and 62 were fifty-four thousand and thirty transactions.

Mr. AUSTIN. That means there would be that number of sales checks?

The WITNESS. I told you before, I couldn't tell you whether this would be the same sales checks. Obviously, there must have been some duplicates, because Department 69 would be duplicated on the 59 Department sales check.

Mr. AUSTIN. Then there would probably be a few less checks?

The WITNESS. Yes; but to what extent less, I couldn't say.

809 The COURT. Would that be one transaction?

The WITNESS. Yes; that would be one transaction. That would be a separate transaction, because it is written up on a separate sales check.

Mr. HORSKY. That is all. (Witness excused.)

Mr. HORSKY. May I call Mr. Weiner.

WILLIAM WEINER, called as a witness by the defense, being first duly sworn, testified under oath as follows:

Direct examination by Mr. HORSKY:

Q. You are employed by the Hecht Company?—A. That is correct.

Q. In what capacity?—A. I am a buyer of the Occasional Furniture Department; that is 76 Department, and also the Lamp Department, which is the 64 Department, and mirrors and pictures, the 70 Department.

Q. You are a buyer in three Departments?—A. Three departments.

810 Q. And you are buyer in Department 76?—A. That is correct.

Q. When you say "Occasional Furniture", will you define it?—A. Occasional furniture means all wood goods, starting with secretaries, desks, drop leaf tables, commodes; all in the wood family.

Q. How long have you been a buyer of Department 76?—A. Seven years.

Q. How long have you been employed by the Hecht Company?—A. This will be my fourteenth year in the company.

Q. Do you recall the preparation of the list of items in the early part of May for your Department?—A. Yes.

Q. This plaintiff's Exhibit 35, I take it is a photostat of the list prepared at that time plus the supplements?—A. That is correct.

Q. Will you explain to the Court how you went about to prepare that original list?—A. We had several meetings prior to the listings. We were instructed—I was instructed to make a complete listing of all the merchandise on our floor at
811 the offered price on our price ticket.

Q. Who gave you those instructions?—A. Mr. Blau, our Manager—our Merchandise Manager.

Q. He is the Merchandise Manager for your Department?—A. For the Home Ware Division.

Q. I did not hear you.—A. Mr. Blau is Merchandise Manager of the Home Ware Division.

Q. Did he instruct you with respect to the modification of any offered price then if it had been changed from the March price?—A. Yes.

Q. Did you change any price?—A. Yes; after the listings were made, we reviewed the list and whatever changes to be made to the merchandise that was offered in March we made those changes.

Q. Were you instructed by Mr. Blau, you say, at the time you prepared this list; is that correct?—A. That is correct.

Q. I show you Plaintiff's Exhibit 37, entitled "Items Sold" on which no ceiling prices were established in Department 76. I notice that this column entitled "Merchandise Received" indicates that some of the items were received in March;
812 some of them were received as late as September. With respect to the items that were received in March—first, let me ask you are any of those items actually listed in your ceiling price book?—A. Yes.

Q. May I get you the book. [Looking through records.] This is your price book, isn't it?—A. That is correct.

Q. Will you indicate to the Court which ones of those items were actually listed and where? Let me get my exhibit, so I can follow you. All right, now.—A. 592—pardon me; 628 over 68 kneehole desk and walnut.

Q. That is the fifth item?—A. That is correct.

Q. Where is that listed? [Looking through record.] May I refer you to page three.—A. Page 3, line 16.

The Court. What line?

The WITNESS. Sixteen, sir.

Q. Will you point out to the Court, Mr. Weiner, where you found it?—A. (Steps up to bench and shows same to the Judge).

Q. That is listed at what price?—A. In my book, $29.95.

813 Q. What is the next item you find listed?—A. 215 over 320.

Q. That appears down about 12 or 13 or 14 lines?—A. Yes.

Q. Where is that listed?—A. Page 7, line 14.

Q. And at what price?—A. $69.95.

Q. I notice that there is one here in walnut and one in mahogany. Are they both listed?—A. Yes; they are both listed; one mahogany and one walnut finish.

Q. Both in the same lines?—A. Yes.

Q. Will you indicate to the Court where they are?—A. (Steps up to the Judge and indicates same.)

Q. What is the next item on this exhibit you find listed?—A. 215 over 341.

Q. That is the next item on this exhibit; is that right?—A. That is correct.

Q. Will you point out to the Court where that is listed?—A. Page 7, line 1, 215 over 341; walnut, $59.95.

814 Q. And it is listed at $59.95?—A. That is correct.

Q. What is the next item you find listed?—A. That is the same piece; both of them are chests.

Q. The next item is the same in mahogany?—A. That is correct; and that is all we have in the description is just the walnut.

Q. The listing indicates only walnut?—A. Walnut only.

Q. And actually then the mahogany item is not listed, is that correct?—A. The mahogany is not listed. Both the same.

Q. Both the same style number?—A. Yes; that is correct.

Q. I notice that the last items on this exhibit, Mr. Weiner, appear or bear different series of factory numbers; are they all in your department?—A. No; these items are in 69 Department; china closet and side chairs, which are dining room furniture.

Q. They aren't in the report?—A. No.

Q. Have you checked to see whether those are listed
815 in the 69 Department list?—A. I did review that.

Q. Will you indicate if they are in the 69 Department? I ask you to point out whether or not they are listed, and if they are, where they are. I hand you the Ceiling Price List for 69 Department, and ask you to show the Court where

these items appear. The first of these items is 49–128, a side chair. Will you point out to the Court where it appears, if it does?—A. Page 10, line 14, $10.95.

Q. The next item is 49–5048. Where does it appear?—A. 5048, page 10, line 12.

Q. Will you show the Court where it is on the schedule?—A. (Steps up to Judge and exhibits same.)

Q. What price is that listed at?—A. $12.95.

Q. The next item is 49–5051; armed chair—an arm chair.—A. Page 10, line 15.

Q. At what price?—A. $19.95.

Q. The next item, 5051, arm chair, same style number; is that listed?—A. That is listed.

816 On what page?—A. $14.95, page 10, line 16.

Q. That is the next line on that?—A. That is correct.

Q. The next one is 49–5052, an arm chair. Will you point out where that is listed?—A. Page 9, line 19.

Q. Would you show it to the Court please?—A. Yes. [Steps up to the Judge and indicates.] 5094 is the number; $12.95.

Q. The next item is 5068, a China closet. Would you indicate where that is listed, if it is listed?—A. Page 9, line 46.

Q. At what price?—A. $49.95.

Q. The last item, is that listed: 1717221–3.—A. I don't think so.

Q. You don't find that listed? I notice that there are, despite the fact that some of these items have been listed, items on here which apparently were either in March or received shortly after March, before May 18th, which were not

817 on your list. Can you explain how those items haven't appeared on your list?—A. We started to make OPA 7's. I believe it was the early part of June, and at that time, we started on one particular form, and then there was a change made. I recall at one time, I may have had about four or five dozen forms that were to be filed, in which we eliminated and made out the new form that was being put in. By that time, I believe a lot of merchandise may have been coming through and comparisons were not made and we were holding on those seven forms which did not go through. In many cases, we did, where we had established—where we had the established price already set, we would put those through, but in the interim we were getting a lot of accumulation of these others that had not been passed along to the OPA office. May I say something?

Q. Did you want to add to your previous answer?—A. Yes; I would like to say this that as I look on this exhibit, I know of a few other items such as 731 over 40 and 731 over 41, that were on my base list.

Q. They are on your base list?—A. Yes. 731 over 40 [hesitating].

Q. Yes.—A. Is Page 2. I have to count these lines.

818 Q. Next to the bottom item; is that the one you refer to?—A. That is correct.

Q. Yes. That is item 731 over 40 on this exhibit that you have in your hand; is that correct?—A. That is correct.

Q. Do you find 731 over 41?—A. That is the next page; the first one on the top list; that is page 3, line 41. [Steps up to Court and indicates to the Judge.]

Q. Line 1, do you mean?—A. Line 1. Excuse me. And the other is 731. [Steps up to Judge and indicates.]

Q. Do you find any others that are listed?—A. Yes; 628 over 109.

Q. Yes; that is on page 11.—A. 24; page 11; line 24.

Q. I don't have page number 11.—A. That is on the supplement list after the OPA forms.

Q. Dated——A. (Interrupting.) Dated October 10th, and each month we get the listings through, and that was mahogany make walnut finish.

819 Q. Would you indicate it to the Court?—A. Yes; and that is on page 11, line 24 (indicating to Judge).

Q. I see that has 101 over 109; not as 628.—A. Well, 101 is a number that the manufacturer of this factory represent as his number; in other words, the Krebs Stengel Company represent—as a matter of fact they advertise—they represent from one to one hundred factories and this is one of their numbers that they use. We have some other numbers, 158. In writing their orders, we copy their confirmation on to our orders; we use their number, but the number is 109.

Q. The number is 109 and the 628 on the exhibit is the factory number of the particular factory purchase?—A. 628. On my base it is 12.

Q. That is the OPA index number; is that correct; the 12?—A. That is right.

Q. Made out for the purpose of this exhibit and not for the purpose of the store?—A. That is right.

Mr. HORSKY. That is all.

Mr. AUSTIN. No cross-examination. [Witness excused.]

820 Mr. HORSKY. I will call Mr. Blau.

JACK BLAU, called as a witness by the defense, being first duly sworn, testified under oath as follows:

Direct examination by Mr. HORSKY:

Q. Will you state your name to the reporter?—A. Jack Blau.

Q. What is your position with the Hecht Company?—A. Merchandise Manager of the Home Ware Division.

Q. What Departments does that include?—A. 59, 69, 76, 70, 64, 3, 4, 5, 6, 1, 63, 65, 66, 67. I think that is all.

Q. That is called the Home Wares-Furniture Division?—A. That is right.

Q. How long have you held that position?—A. Five years.

Q. How long have you been employed by the Hecht Company?—A. Fourteen years.

821 Q. Do you recall, Mr. Blau, the occasion of making out the lists on the general maximum price regulation in the early part of May?—A. Yes, I do.

Q. You heard Mr. Weiner state that he had received instructions from you with respect to the making out of this list?—A. Yes.

Q. Do you recall giving him these instructions?—A. Yes.

Q. Can you tell the Court the reason why you so instructed Mr. Weiner?—A. We had a few meetings prior to our decision and we arrived at taking the offered price because of the element of time.

Q. That is, you mean the time within which you had to prepare the lists?—A. That is right.

Q. How long did you have to prepare those lists; what was the instruction you received from the Price Control with respect to the time?—A. To take the delivery price——

Q. (Interrupting.) No; with respect to the time which you had to prepare the lists?—A. Will you repeat that question.

822 Q. How long did Mr. Levy, then the Price Control Administrator, give you to get the lists ready?—A. I can't recall exactly, but it was a very short time.

Q. Would you elaborate to the Court what you mean about the time element entering into your decision?—A. I would say we probably had, after we had received instructions, about a week in order to get prepared and if we took the delivery price, it would take us much too long to arrive at a ceiling price.

Q. You knew at that time, did you not, that you did have sales checks which indicate delivery price? I mean, indicate whether it was a delivery or not on a particular item?—A. Yes.

Q. The sales checks in the Furniture Department, about which we are now talking about?—A. I don't know where the sales checks were located, but I knew we had sales checks.

Q. You didn't go to those amounts for the reason you just stated?—A. That is right.

823 Mr. HORSKY. That is all.

Mr. AUSTIN. No cross.

(Witness excused.)

Mr. HORSKY. I will call Mr. Weitzberg to resume the stand.

OSCAR C. WEITZBERG, recalled.

Redirect examination by Mr. HORSKY:

Q. Mr. Weitzberg, you have made an examination of all the exhibits introduced into Department 76?—A. I have.

Q. With the assistance of Mr. Weiner?—A. That is correct.

Q. And Mr. Blau?—A. Not with Mr. Blau; with Mr. Weiner and several others in the warehouse.

Q. Do you have on the bench opposite you, the Exhibit 37 in Department 76?—A. Yes, I have.

Q. On that exhibit, Mr. Weitzberg, on lines 9 and 10,

824 or rather line 10, I notice a breakfront desk, 73141; which was originally offered at $59.95, and the first sales—the first sale is indicated at $69.95. Did you make an investigation of that?—A. I did.

Q. What did you discover with respect to that $69.95 figure?—A. I don't seem to have the guide card here, but my notes on it indicate the first posting on the guide card occurred on May 13th and it represented a transfer of a 73141 to one of our Baltimore stores and the $69.95 was not a sale, but a transfer to this other store.

Q. How is the price with respect to the transfer?—A. A claim is prepared; we use a claim in making the transfer from one store to another. It has a form different than the ones we had here before.

Q. This is a bookkeeping transaction?—A. That is correct.

Q. You said you do not have the guide card?—A. I do not have the guide card. Apparently this is another one being used during the inventory.

825 Q. You have the other exhibit for this Department?—A. I do.

Q. Have you made an investigation of Plaintiff's Exhibit 36, Mr. Weitzberg?—A. Yes; I have.

Q. The first item on that exhibit is an item which has no figures in the right hand column. Do I understand that is not claimed as a price violation, Mr. Austin?

Mr. AUSTIN. That is right.

Q. The next item, Mr. Weitzberg, is a commode with an indicated highest delivery March price of $29.95 and sales there-

after at $39.95. What did you discover with respect to that exhibit?—A. I find there was a $39.95 delivery in March. Sales check number 13282–41. It was sold March 27th and delivered on March 31st, at $39.95.

Q. Do you have that sales check?—A. Yes; I have.

Q. Will you indicate to the Court the item?—A. (Steps up to the Judge.) This is the sales check.

Q. And that is listed, Mr. Weitzberg, at $39.95; is that correct?—A. That is correct; on page one, line thirty-six.

826 Mr. HORSKY. I offer that sales check in evidence as Defendant's Exhibit——

The CLERK. Number 40.

Mr. HORSKY. 40.

(The document was marked "Defendant's Exhibit Number 40," and received in evidence.)

Q. The next item is a mahogany secretary indicated with the highest delivery March price at $39.95 and sales thereafter at $44.95. What did you discover with respect to that item?—A. The delivery in March at $39.95 to customer C. R. Grable covering sale dated February 21.

Q. That is the highest delivery price in March?—A. That is correct. We find we had sales in January for $44.95.

Q. The next item is a maple chest at $54.95, with one sale at $59.95. What did you discover with respect to that?—A. Ceiling is $54.95.

Q. You mean that is the highest price at which it was delivered in March?—A. Yes; but it is not on the basis of

827 the Mathes check which is indicated as the highest delivery. That check actually was delivered in May.

Q. Have you the check?—A. Yes; I have.

Q. Is that the check number?—A. 1587224.

Q. And what was the delivery? Would you indicate to the Court?—A. Yes. It was sold in May and delivered in May [indicating to Judge].

Mr. HORSKY. I offer that check in evidence as Defendant's Exhibit 41.

(The document was marked "Defendant's Exhibit 41" and received in evidence.)

Q. Do you find another check which was delivered in March?—A. I haven't had any delivery. I don't have any other sales check for March. We did have sales at $54.95.

Q. On what basis did you testify that the correct ceiling is $54.95?—A. We have two sales at $54.95.

Q. In March?—A. In March, which would establish the cor-

rect ceiling. However, the item—the alleged sale to
828 Gallagher of July 3rd at $59.95 was an exchange. The sale to Gallagher occurred on June 22nd at $54.95 and is so indicated accordingly on the guide card at $54.95, but apparently the Clerk, in making out the exchange order made it out incorrectly.

Q. Would you indicate it to the Court?—A. Yes. I have the original Gallagher check and the guide card.

Q. Show it to the Court.—A. This entry of June 27th indicates sale to Gallagher at $54.95 and this is the sales check. This is the $354.95, number 3823802.

Mr. Horsky. I offer it in evidence. Defendants' Exhibits 42 and 43.

(The document was marked "Exhibit Numbers 42 and 43" and received in evidence.)

Q. The next item, Mr. Weitzberg, is a commode with an indicated highest March price of $10.88 and four sales thereafter at 12.95. What did you discover with respect to that?—A. The government investigator listed this as a delivery to Horace A. Duree. It should have been Horace A. Owen.

Q. Is that the name that appears on sales check
829 number 13233-19?—A. That is correct.

Q. What else did you discover with respect to this?—A. The sale to Mr. Owen occurred on February 7th. The merchandise was delivered on March 12th.

Q. And $10.88 is the largest delivery March price?—A. Yes; that is the highest delivery March price. There were no sales in March however, but this particular piece was delivered in March. The offering price during March was at $11.00.

Q. I notice this is listed at $14.95; is that correct?—A. Correct.

Q. A statement of the listing attributed to this item?—A. Yes; it is listed on page 3, line 44. It had sold as early as January at $14.95.

Q. Does this other information in the submitted ceilit g price list, now an exhibit, appear in the submitted ceiling price list?—A. No; just 592715 walnut.

Q. The next item is a cocktail table with the highest March delivery price at $12.95 and two sales thereafter
830 at $14.95. What did you discover with respect to that?—A. The highest delivery in March was $12.95. Something must have happened. On or about the day the merchandise sold at $14.95, one of the tags may have been pulled off and the wrong tag put on, because according to the guide card there are sales on the 24th which is the day indi-

cated for the second item in the right hand column "sales" at $8.88.

Q. At $8.88?—A. That is right.

Q. On the same day as the sale of $14.95?—A. Yes; so apparently something had gotten—somebody had gotten the tags mixed up because most of the sales—as a matter of fact there are four sales at $8.88 on the same day.

Q. This is not indicated as listed or not listed. Was this item listed?—A. No, this item was not listed.

Q. The next item is a cocktail table with the highest indicated March delivery price of $12.95 and one sale at $14.95. Did you discover anything with respect to that item?—

831 A. The highest delivery was $12.95.

Q. And the sale at $14.95 was above the highest March?—A. Yes; that is correct.

Q. The next item is a cocktail table with the highest indicated March price at $13.95 and one sale at $14.95. What did you discover with respect to that item?—A. The government investigator listed delivery to R. S. Yarborow, check number 5943-43 as $13.95 and the sales check actually is at $12.95.

Q. That is, the highest delivery March price is less than the government investigator listed it?—A. That is correct.

Q. The sale then at $14.95 was above the highest delivery March price?—A. That is correct.

Q. I didn't ask you on this item or the one before whether they were listed or not?—A. The first one was listed page 4; $14.95.

Q. That is the cocktail table walnut; the one you just testified about?—A. It isn't listed.

832 Q. It is not listed?—A. That is correct.

Q. The next item is a lamp table with the highest indicated March price at $12.95 and various sales at $13.95, and indicated as being not listed. What did you discover with respect to that?—A. The item was listed on page 4, line 7 at $13.95. The highest delivery was at $12.95.

Q. The sales at $13.95 were therefore above the highest March delivery price?—A. That is correct.

Q. The next item is a $13.99 table with sales at $14.99 and other prices, and indicated as being not listed. What did you discover with respect to that item?—A. The delivery to customer Green on March 4th covered a sale that was made on December 1, 1941. This was a "will call" sale and merchandise was paid for in full on February 28th. The table was delivered on March 4th. The last sale of this table was made on January 12th. On February 11th, one mahogany table and one walnut

table were returned to the factory. There were no tables of this type in stock from February 11th to July 29th, when the
833 two damaged tables that had been returned to the factory were returned reconditioned.

Q. The highest delivery March price is $13.99?—A. That is correct.

Q. Was this item listed?—A. No; it was not listed.

Q. You will notice, Mr. Weitzberg in the column marked—on the right hand column marked "Price and Overcharge" that even though the marked price is $14.99, the overcharge is listed as $3.96. Is that right?—A. That is correct.

Q. And the same is true even though the marked price comes up to $17.95 and $19.95?—A. That is correct.

Q. In other words, the overcharge column is not strictly accurate on this?—A. That is correct.

Q. The next item, Mr. Weitzberg, is a mahogany commode with the highest indicated March price at $11.00 and sales at $12.95 and indicated as not listed. Would you state what you discovered with respect to that item?—A. This item was listed on page 4, line 33, at $14.95. The highest delivery however was at $11.00.

834 Q. In March?—A. In March; yes. The piece had sold regularly in 1941 at $12.95.

Q. The next item is a table with the highest indicated March price $10.88 and sales thereafter at $13.95, and indicated as not listed. What did you discover with respect to that?—A. It was listed on page 4, line 8, at $13.95; the highest delivery however was at $10.88.

Q. The next item is an end table, with the highest indicated delivered March price at $12.95 and sales thereafter at $14.95, and indicated as not listed. Will you indicate what you discovered with respect to that item?—A. It was listed on page 4, line 35.

Q. At what price?—A. At $14.95.

Q. What was the highest delivery price in March?—A. $12.95.

Q. The next item is also a table with the highest indicated March delivery price at $12.95 and one sale thereafter at $14.95, indicated as listed at $14.95. What did you discover with respect to that?—A. The highest delivery was at
835 $12.95. There is only one violation at $14.95. On October 2nd, but we have not been able to find that sales check to verify it. There were sales before and after this sale at lower prices.

Q. You haven't the sales check with would refute the fact that the guide card indicates sale at $14.95?—A. That is correct.

Q. The next item is a walnut mahogany commode at the highest indicated delivery March price of $12.95, and sales thereafter, $14.95 and $13.95. What did you discover with respect to that item?—A. The highest March delivery was $12.95.

Q. That is indicated as being listed at $13.95?—A. That is correct.

Q. The next item is a telephone set with the highest indicated March price $10.95 and two sales thereafter at $12.95 entered as—indicated as listed at $12.95. What did you discover with respect to that item?—A. That was listed on page 5, line 4, at $12.95. The highest delivery was $10.95.

Q. In March?—A. In March.

Q. The next item is a maple item with an indicated
836 March delivery price at $3.99 and sales thereafter at $4.99. You say they are not listed. What did you discover with respect to that item?—A. It wasn't listed, and the highest delivery in March was $3.99.

Q. The next item is a mahogany walnut with an indicated March price of $4.95 and sales thereafter at $6.95. What did you discover with respect to that item?—A. This was listed at page 5, line 45, at $6.95. The highest delivery in March, however, was at $5.95.

837 (At 2:30 p. m. January 26, 1943.)

The Witness, WEITZBERG, continued to testify on:

Direct examination by Mr. HORSKY:

Q. The next item is a mahogany wall rack, with the indicated highest March delivered price of $2.50, and sales thereafter at $2.99. What did you discover with respect to that item?—A. The highest delivery was $2.50.

Q. Two dollars and fifty cents?—A. Yes; that is correct. This merchandise sold regularly in 1941 at $2.99 and was reduced to $2.50 for the half-yearly sale.

Q. The next item—oh, excuse me—that is indicated as listed at $2.50; is that correct?—A. That is correct. That is on page 5, line 54.

Q. The next item is a mahogany wall rack with the indicated highest March delivered price of $8.95, and two sales thereafter at $9.95, and stated to be not listed. What did you discover with respect to that item?—A. The sale to Lucy Peters was made on February 26. The merchandise was delivered in March at $8.95.

Q. That is the highest March delivered price?—A. That is the highest March delivered price. That was not listed.

Q. Was not listed? Thank you. The next item is
838 a walnut wall rack with the indicated highest March delivered price of $3.99 and sales thereafter at $4.99 with no information in the list column at all. What did you discover with respect to that item?—A. The highest March delivery was $3.99.

Q. Was it listed?—A. No; it was not listed.

Q. The next item is a walnut mahogany Maybasket with the indicated highest March delivered price of $5.95, and sales thereafter at $6.95. Indicated as being not listed.—A. It was listed on page 4, line 59, at $6.95.

Q. What was the highest delivered March price in March?—A. Five dollars and ninety-five cents.

Q. The next item is a maple cabinet with the indicated highest March price of $22.95. No indication about the listing. What did you discover with respect to that?—A. This item was not listed.

Q. What is the highest delivered price in March?—A. Twenty-two dollars and ninety-five cents.

Q. The next item is a walnut mahogany lamp table with the indicated highest price $5.00, and sales thereafter at $9.85 and $8.85. Indicated not listed.—A. This item was listed on page 4 at $9.95. There were four pieces that were sold on clearance in March, at $5.00, and that is why the highest delivered
839 price in March was at $5.00. Two of the tables were kept by the customers and two were returned to the store. The two returned to the store were sold on June 13 at $9.95. This sale was cancelled on August 13. They were then resold at $8.88 apiece.

Mr. HORSKY. Perhaps I could explain, Your Honor: These items that are indicated as being not listed do appear in the list: Sometimes they are on page 4 on the list of Mr. Weitzberg, but that a page apparently was not filed with OPA or got lost in transit, so the documents OPA had to check against do not reveal those items although they are on the store list.

Mr. AUSTIN. Of course, if those are the facts, we cannot say they are or are not. It may be that OPA lost this page, of course. But we can go along on the supposition that the questions are propounded and the answer to be made are on the base period statement, which, of course, is to be kept by the store and not filed with OPA.

Q. The next item, Mr. Weitzberg, is a mahogany walnut end table, with the indicated highest March delivered price of $12.95, and a single sale at $14.95. Indicated as listed at $14.95. What did you discover with respect to that item?—

A. The higest delivery price, March, was $12.95. It was listed on page 3, line 42 at $14.95.

840 Q. The next item is a maple bookcase with the indicated highest March delivered price of $12.95, and sales thereafter at $14.95, and indicated as being listed at $14.95. Will you explain what you found with respect to that?—A. The delivery on March 7th, to Edward Sloan, covered a sale made on February 11 at $12.95.

Q. That was the highest delivered price in March?—A. Delivery. That is correct.

Q. And it was listed at $14.95?—A. No; it was not listed.

Q. It was not listed?—A. That is correct; it was not listed.

Q. The next item is a mahogany cocktail table, with the indicated highest March delivered price of $12.95, and one sale thereafter of $14.95. Indicated as not being listed. What did you discover with respect to that item?—A. The highest delivery was $12.95.

Q. And the sale at $14.95 was above the highest delivered March price?—A. That is correct.

Q. Was this listed?—A. No; this was not listed.

Q. The next item is also a mahogany cocktail table, with the indicated highest March delivered price of $11.00, and

841 one sale thereafter at $12.95, and indicated as being not listed. What did your investigation reveal with respect to that?—A. This item had sold regularly during January and February, 1942, at $12.95; apparently had been put out on sale at $11.00 during the half-yearly sale.

Q. Eleven dollars is the highest delivered March price?—A. That is correct.

Q. Was this listed, Mr. Weitzberg?—A. No; this item was not listed.

Mr. AUSTIN. Will you look on page 7 of your ceiling price list, Mr. Weitzberg, and the third item from the bottom, and see if that is not the maple bookcase 130–503, listed at $14.95, which I believe you said was not listed.

The WITNESS. Which item is it?

Mr. AUSTIN. Two items up from where you are now.

Q. Do you find them, Mr. Weitzberg?—A. I find it now.

Q. It is listed?—A. Yes. Thank you.

Q. The next item is a walnut end table, with the indicated highest March delivered price of $14.95, and indicated with sales thereafter at $15.95, and listed at $14.95. What

842 did you discover with respect to that?—A. The delivery on March 4, to Jack Fullerton, covering sale dated February 28, at $14.95.

Q. That was the highest delivered price in March?—A. That was the highest delivered price in March.

Q. And is it listed at $14.95?—A. It was listed on page 6, line 57, at $14.95.

Q. The next item, Mr. Weitzberg, is a mahogany walnut lamp table with the indicated highest March delivered price at $12.95, and one sale at $14.95, and indicated as being listed at $12.95. What did you discover with respect to that?—A. It was listed on page 6, line 15, at $12.95, and the sale to Vasco, on 10/20, was cancelled on November 12.

Q. What was the highest delivered price in March, Mr. Weitzberg?—A. Twelve dollars and ninety-five cents.

Q. The Vasco sale was cancelled after the—you say in November?—A. That is right. On November 12.

Q. You have a guide card that shows that?—A. Yes; I have that.

Q. Will you indicate to the Court how you found the sale was cancelled?

The WITNESS. (Exhibiting card to the Court.) The entry on November 12—and immediately underneath, on November 12, "Vasco" in red.

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 44.

843 Q. The next item is a mahogany walnut console table, with the highest indicated March delivered price at $24.95, and one sale thereafter at $29.95, with nothing in the ceiling price list to follow. What did you discover with respect to that item?—A. The delivery to Bakes, which, incidentally, should be Vakes, was cancelled and credited on April 1st. So, there is question as to whether or not that would constitute the highest delivered price.

Q. Can you tell from the record you have, whether that was cancelled after delivery or whether it was ordered and then cancelled before delivery?—A. All I have is the original sales check, and has a stamped impression, indicating the piece had been credited. I cannot tell from this order whether it was all delivered and then cancelled, or whether it was cancelled on delivery. It might have been delivered and then picked up subsequently.

Q. Or it might not have been delivered at all?—A. Yes; but there is nothing to indicate that.

Mr. AUSTIN. As a matter of fact, there is the usual stamp to indicate delivery, is there not?

The WITNESS. Yes, but also stamps there to indicate credits.

Mr. AUSTIN. What would that indicate, that stamp marked April 7, 1942?

The WITNESS. That the piece had been returned to
844 stock. But now whether it was returned to stock after it had been out on delivery, I cannot tell from that.

Mr. AUSTIN. There is nothing on this at all to indicate when it was returned, is there?

The WITNESS. No; except this date of April 7, this smaller date.

Mr. AUSTIN. Yes; all right.

Mr. HORSKY. I will offer the sales ticket in evidence, Your Honor, as Defendant's Exhibit 45.

Q. Was this item listed? Well, before I come to that, Mr. Weitzburg, what did you discover with respect to any other deliveries of this table in March?—A. I do not have the guide card here. It is one of the items being used in the inventory.

Q. You do not know whether there were any other deliveries at any other price?—A. No; I do not recall whether there were or were not. This item was not listed.

Q. The next item is a mahogany walnut coffee table, with the indicated highest March delivered price of $17.95, and sales thereafter at $19.95, with a listing indicated at $17.95. What did you discover with respect to that item?—A. It was listed on page 6, line 42, at $17.95.

845 Q. And what was the highest delivered price in March?—A. $17.95.

Q. The next item is a nest of tables, with the indicated March delivered price of $27.95, and sales thereafter at $29.95, with the listing of $29.95. What did you discover with respect to that item?—A. Listed on page 6, line 35, at $29.95.

Q. What was the highest delivered price in March?—A. $27.95.

Q. Next item is a cocktail table, with the indicated highest March delivered price of $15.95, and one sale thereafter at $17.95. Stated to be not listed. What did you discover with respect to that item?—A. This was not listed.

Q. That was the highest delivered price in March?—A. $15.95.

Q. Did you discover anything with respect to a subsequent sale at $17.95?—A. My notation is that the sale of September 24th was cancelled on November 30th.

Q. You have the guide card?—A. I do not have the guide card. It is another that is on the inventory.

Q. The next item, Mr. Weitzberg, is a maple book-
846 case, with the highest indicated March delivered price of $24.95, and a series of subsequent sales at $29.95, with the listing at $24.95. What was the result of your investigation with respect to that item?—A. This was listed on page

8, line 5, at $24.95. There was a sale made at $29.95, and was offered for delivery on March 19.

Q. When you say was offered for delivery, what do you mean?—A. The customer did not accept the merchandise offered to him for delivery.

Q. You mean from the truck?—A. That is right.

Q. Do you have anything to indicate that?

Mr. HORSKY. Will you indicate to the Court how you know the customer refused it from the truck?

The WITNESS. (Exhibiting to Court.) This is the driver's signature. Cancelled 3/19.

Mr. HORSKY. I offer that in evidence as Defendant's Exhibit 46.

Q. Mr. Weitzberg, if delivery constitutes handing it to the carrier, was that delivered; is that correct?

Mr. AUSTIN. Object to that question.

A. That was actually put in the truck of the Hecht people; that is correct, and actually taken to the customer's home, and whether he refused to accept it before delivery, or cancelled it after delivery, I do not know. But apparently cancelled when the driver offered the piece of merchandise at the time of delivery.

847 Q. And that was at what price, Mr. Weitzberg?—A. Twenty-nine dollars and ninety-five cents.

Q. Which is the price at which subsequent sales were made; is that correct?—A. That is correct.

Mr. AUSTIN. Just in order that we know what the records will show what these various markings on the delivery slips mean, Mr. Weitzberg, will you explain these marks here. A stamp that says, "See the return number." Then apparently number is written in there by some person, followed by a date and initial. Can you explain that?

The WITNESS. Yes: suppose we go back and trace the check through.

Mr. AUSTIN. All right.

The WITNESS. The sale was made on March 17. The date to be delivered was March 19—as indicated, are to be delivered March 19. The notation here, in pencil, "Cancelled 3/19" and then the signature would indicate that the driver had offered for delivery and the customer said she had changed her mind. So, he would write "Cancelled" and sign his name.

The merchandise was put back in stock on March 28, as is indicated by this stamp over here. And, in order to
848 clear the transaction, a credit would have had to be written, so that an original entry could have been made on the guide card, to clear the account as far as the stock is con-

cerned, and also customer's account had been charged with $29.95.

Mr. AUSTIN. Now, there is no delivery stamp on this, is there?

The WITNESS. No; there is no delivery stamp.

Mr. AUSTIN. Why is that?

The WITNESS. The delivery stamp is stamped on after it has actually been delivered.

Mr. AUSTIN. That is done by the driver after he——

The WITNESS. No; the driver does not do that. In other words, at the time the driver leaves the warehouse a sheet is made up listing all the items he has on delivery. There might be fifty items on the sheet and he is charged with 250 pieces of merchandise. When he comes back he must return these delivery copies with the customer's signature thereon, that returned the pieces of merchandise.

Mr. HORSKY. And then they are stamped?

The WITNESS. Then they are stamped "delivered" and the date.

By the COURT. We will take a five-minute recess.

848A (At 3:05 p. m., following the recess.)

Q. The next item, Mr. Weitzberg, is a walnut knee-hole desk, with the indicated highest March delivered price of $27.95, and a series of sales thereafter at $29.95. Indicated as being not listed. What did you discover with respect to that?—A. Which knee-hole desk is that? That is the one to Charles Perry, 628–42. That was listed on our page 1, line 2, at $29.95.

Q. What was the highest delivered price in March?—A. Twenty-seven dollars and ninety-five cents.

Q. And the sales at $29.95 were above the highest delivered March price?—A. That is correct.

Q. The next item is another knee-hole desk, with the highest delivered March price indicated at $24.95, and sales thereafter at $27.95 and $29.99. Indicated as listed at $29.95.—A. That was listed on page 3, line 16, price $29.95.

Q. What was the highest delivered March price?—A. The highest delivered March price was at $29.95.

Q. Twenty-nine dollars and ninety-five cents?—A. That is right.

Q. Do you have some record on that?—A. Yes. I do not have the delivery copy, the delivery copy, the sales check. I have the tissue and I also have another sale that was

849 made to the same customer at or about the same date, and the merchandise was delivered to the customer with all the other merchandise. We called the customer up to verify it.

I mean, we did not have the delivery card here, and we called the customer to establish whether all the merchandise was delivered at the same time.

Q. Will you show the Court what Checks you have there, and the tissue?—A. Yes.

The WITNESS (Exhibiting to the Court). The last item on this tissue was the sale at $29.95, 628–42 (6/28/42).

The COURT. Was that the date?

The WITNESS. That was the date of the sale; yes.

The COURT. Where is the date there?

The WITNESS. 2/28; sold at 2/28 and delivered on March 9th. I have another sales check to the customer Winkler for other merchandise, and this was delivered—part of it was delivered on March 9th and part of it was on March 6th. But I do not have the delivery copy of the sale covering the 6/28 line 68 merchandise.

Q. Do you have, Mr. Weitzberg, a schedule of deliveries by the truck driver?—A. I do not have that sheet today.

850 Q. Did you look for it?—A. Yes; I looked for it.

Q. And could not find it?—A. Could not find it.

Q. And what records you have lead you to conclude that?—A. Yes; and I had one of the girls in the office speak to the customer to verify that.

Mr. HORSKY. Any comment on that?

Mr. AUSTIN. Our comment is that we think that is hearsay.

The WITNESS. I think so, too.

Mr. HORSKY. I will offer those in evidence, Your Honor, as Defendant's Exhibits 47 and 48.

Q. The next item, Mr. Weitzberg, is a walnut end table, with the indicated highest March delivered price of $7.99, and sales thereafter at $9.95 and one at $14.95. And indicated as not listed.—A. That was listed on page 4, our page 4, line 13, at $14.95.

Q. Fourteen dollars and ninety-five cents?—A. That is correct.

Q. What was the highest delivered March price?—A. The highest delivered March price was $9.95.

Q. Nine dollars and ninety-five cents?—A. That is correct.

Q. Do you have the sales check for that?—A. Yes.

851 Q. This is still 229–6299½?—A. That is correct.

Q. Will you indicate to the Court where it appears on that slip?

The WITNESS (exhibiting to the Court). 6299½.

Mr. HORSKY. I offer that sales check in evidence as Defendant's Exhibit 49.

Q. I notice, Mr. Weitzberg, there was one sale at $14.95 on

June 1st. Did you find anything with respect to that particular transaction?—A. Yes; that was cancelled on June 18.

Q. Do you have the guide card which indicates that?—A. Yes; I have.

The WITNESS. (To the Court.) Here is a sale at $14.95 on June 1st, to this customer, and cancellation of that sale on June 18th. $14.95.

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 50.

Q. The next item is also a table, with the indicated highest March delivered price of $7.99, and sales at $9.95. What did you discover about that?—A. That was listed on page 4, line 25, at $14.95.

Q. And what was the highest delivered price in March?—A. The highest delivered price was $7.99.

Q. As indicated on the exhibit?—A. That is correct.

852 Q. The next item is a walnut commode, with the indicated highest March delivered price of $10.88, and sales thereafter at $12.95, with the ceiling price listed at $14.95. What did you discover with regard to that item?—A. That is listed on page 5, line 45, at $14.95.

Q. What was the highest price in March?—A. The highest March delivery was $12.95. Sales check 11258–23. Delivery on March 24th for $12.95.

Q. You have the sales check, Mr. Weitzsberg?—A. I do.

Q. Will you indicate to the Court where it appears on that ticket?

The WITNESS (to the Court). This was the delivery at $12.95; delivered on March 24th.

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 51.

Q. The next item, Mr. Weitzberg, is a mahogany coffee table, with the indicated highest March delivered price of $10.88, and sales of $12.95. And indicated as not listed. What did you discover with respect to that last item?—A. This was listed on page 3, line 34, at $14.95.

Q. And what was the highest delivered price in March?—A. The highest delivered price in March was $12.95. As per check 13426–49. Delivered on March 14th.

853 Q. Do you have that check?

(The Witness exhibits paper to the Court.)

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 52.

854 Q. Would you indicate, Mr. Weitzberg, how many of the sales alleged were eliminated on that item?—A. Twenty-seven.

Q. And leaves how many?—A. Two. I haven't been able to find those sales checks. Both were sales of $14.95 made on July 3 made by the same sales person, both may have been made in error.

Q. But you have nothing to substantiate that?—A. That is correct.

Mr. AUSTIN. We object to the introduction of Defendant's Exhibit 52 on the ground that it is illegible and it has been written over apparently in pencil so that it is impossible to tell what it means.

Mr. WEITZBERG. There is an entry on the guide card, which is very distinct, for $12.95.

The COURT. It will be received.

(The document previously marked "Defendant's Exhibit 52," was received in evidence.)

Mr. HORSKY. Perhaps I better clarify this. May I introduce the guide card in evidence as Defendant's Exhibit 53?

(The document was marked "Defendant's Exhibit 53," and received in evidence.)

Mr. HORSKY. Your Honor, unless Government counsel wishes to reexamine, I would again like to withdraw
855 Mr. Weitzberg.

Mr. AUSTIN. No further cross-examination of Mr. Weitzberg.

HARRY CRONE, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

By Mr. HORSKY:

Q. You stated your name for the reporter, Mr. Crone?—A. I have.

Q. Are you employed by the Hecht Company?—A. I am.

Q. What is your position?—A. Buyer of furniture 59; that is living room furniture.

Q. Living room furniture?—A. Correct.

Q. How long have you occupied that position, Mr. Crone?—A. Approximately two years and about seven months.

Q. And how long have you worked for the Company?—A. That time.

Q. Do you recall, Mr. Crone, the preparation of the list under General Maximum Price Regulation in early May of
856 1942?—A. I do.

Q. Could you tell the Court how you prepared the list for your department?—A. Yes. The list in my department was prepared directly from the floor, from the price tags, off the prices from those tags.

Q. Did you adjust those prices in any instance to March prices?—A. Yes. In several instances we took cancellation of mark-ups on merchandise that we knew had been offered during March at a lower price than we were now offering.

Q. Why did you persue that particular course, Mr. Crone?—A. Because in trying to comply with OPA regulations we had to adjust our prices to our March prices. Naturally, if our prices were marked higher in May we had to reduce them to the March price.

Q. Did you receive any instructions as to how you were to do this?—A. Yes; I was instructed to take those prices directly from the floor and then to review the list and ascertain whether any of the merchandise was marked higher and so reduce it.

857 Q. Who so instructed you?—A. Mr. Blau, my merchandise counsel.

Q. The Mr. Blau that testified here this afternoon?—A. Correct.

Q. Do you recall the investigation bythe Office of Price Administration in September and October?—A. I do.

Q. Did you assist them at that investigation?—A. Yes; I spent quite a bit of time with them.

Q. What did you do to assist?—A. Well, I spent approximately two or three weeks—I am not sure of the exact time—with their investigators, Mr. Webb, in the warehouse at which time they had worked on the sales checks and worked on the cards, and I was with them most of that period on both 59 and part of 69.

Q. That is, you were assisting with the investigation?—A. At that time.

Q. You say for two or three weeks?—A. That is correct. I am not quite sure of the dates.

Q. Was anybody from the store also doing that same kind of work?—A. Mr. Singer assisted them later. I had some work that I had neglected in the meantime, and Mr. Singer took over for me after I left.

858 Q. Did any of the employees of the store at the warehouse assist the investigation, do you know?—A. Well, from time to time when we wanted additional information one or two of the girls would get something for us. There was no direct help that I know of. That was done right along.

Q. Mr. Crone, there has been introduced as Government Exhibit 14 a list of items entitled "Items Sold Before Ceiling Established." There did not appear any submitted price by 10/10/42. Could you indicate to the Court how it would happen that there would be items that would not appear on your

submitted ceiling prices?—A. Would you mind repeating that last part?

Q. Would you indicate how it would happen that there would be items which would not appear on your ceiling price list which would have been received prior to October the 10th?—A. Well, between the period of March 31 and June 1, which is approximately two months, I had a great deal of merchandise come into my department which made it very difficult for me to sort of catch up on the work I had to do and the establishment of the ceiling prices on the sevens. As a matter of fact, we had to hire an additional warehouse out of town in order to get a great deal of merchandise in prior to the sale, and
859 all that merchandise was received between April 20 and the end of May.

Now, all that goods piled in and I was continually buying additional merchandise, and when the ruling came out, rather that OPA sevens had to be made out for merchandise coming in I started to establish them on that basis. In the meantime this backlog of goods had arrived, and in an effort to catch up on it I would have to set aside practically everything I was doing at that time. As a matter of fact, since then I think it has taken me approximately six weeks to get that goods properly lined up.

Q. You understand all new items you receive now do have to have an OPA seven?—A. Definitely.

Q. And are not sold until the prices are determined?—A. Merchandise cannot be sent to our floor unless the ceiling price has been established.

Mr. Horsky. I think that is all for this witness, your Honor.

Mr. Austin. No cross-examination.

(Witness excused.)

Oscar C. Weitzberg resumed the stand and testified as follows:

By Mr. Horsky:

Q. Mr. Weitzburg, you have made examination of
860 Exhibit 13A, B, and C, which are sales above highest March price in Department 59?—A. I have.

Q. The first item on that Exhibit, Mr. Weitzberg, is a line which has only partial information in the right hand column. Is that not alleged as a price violation?

Mr. Austin. No; it is not.

Q. The next one is a sale of a high back chair at an alleged March price of $18.88 of which there was a sale thereafter at

$24.95 and the ceiling price was not listed. Would you state what you discovered with respect to that item?—A. This item is listed by the Government investigator as item 15–1820. We don't have such a number. But we do have a number 157–1820, and the same item appears again as the sixth item of this schedule. The highest delivery of 157–1820 was $24.95.

Q. $24.95?—A. That is correct. It was delivered on March 25.

Q. That is the price on which the subsequent sale took place. Is that correct?—A. That is correct.

Q. Do you have the sales check for that?—A. I do.

Q. Would you indicate to the Court where 157–1820
861 appears on that sales check?—A. There is 157–1820, club chair.

Mr. HORSKY. I will offer that sales check in evidence, your Honor. Defendant's Exhibit 54.

(The document was marked "Defendant's Exhibit 54," and received in evidence.)

Q. This is indicated as not being listed, Mr. Weitzberg.—A. It is listed on page 57, line 16.

Q. At what price?—A. $24.95.

By Mr. AUSTIN:

Q. Will you read the description on the ceiling price list of that, what you alleged that item to be, Mr. Weitzberg?—A. Tufted back, Queen Anne damask and tapestry. I can't make it out—I think it is tile set.

Q. Over in the left hand column how is it described?—A. There is no description. I presume it is a continuation of the line above, barrel chair. The item above is barrel chair.

Q. The one referred to on the exhibit is a high-back chair, is it not?—A. On that chair?

Q. On the exhibit, isn't that referred to as a high-
862 back chair?—A. High back; yes.

By Mr. HORSKY:

Q. Is there any difference between a high-back chair and a barrel chair, Mr. Weitzberg?—A. The reason we consider this—as I said before, we had no 15–1820 and the thing that came closest to this item was 157–1820. Now, whether the investigator put down Hi B chair when he meant something else, I couldn't say. I had to infer this was 157–1820.

By Mr. AUSTIN:

Q. Do you have that Jaquith sales check?—A. Jaquith? Yes; I believe that is a B B chair which would indicate a barrel back chair.

By Mr. HORSKY:

Q. In other words, it is incorrectly described on the exhibit?—A. That is correct.

Mr. HORSKY. I will offer the Jaquith check in evidence as Defendant's Exhibit 55.

(The document was marked "Defendant's Exhibit 55," and received in evidence.)

Mr. HORSKY. Do you have any further questions, Mr. Austin?

863 Mr. AUSTIN. No.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a club chair which indicates a highest March delivered price of $29.95 and sales thereafter at $39.95, listed at $29.95. Would you indicate what you discovered with respect to that item?—A. The sale to McDonough was on February 28, delivery was on March 5. There was a sale on March 27 to a customer by the name of Stewart for $39.95. This wasn't delivered until after March 31.

Q. The highest delivery price was $29.95?—A. That is right.

Q. And the sales of $39.95 were above the March delivery price?—A. That is right.

Q. What is it listed at, $29.95 as indicated on the exhibit?—A. No. It was listed at $39.95 on page 6, line 30.

Q. The next item, Mr. Weitzberg, is a barrel chair at an indicated highest March price of $28.88 and no item except names in the right-hand column. I take it that is not alleged as an improper sale.

Mr. AUSTIN. No price violation alleged.

Q. The next price item is a club chair of a highest
864 indicated March price of $29.95 and one sale at $34.95, indicated as not being listed. What did you discover with respect to that item?—A. The highest March delivery price was at $29.95. However, there was a sale to a customer on March 28 for $34.95. It was not delivered until April 1.

Q. The highest delivered price in March was $29.95?—A. That is right.

Q. Was this listed?—A. No; this was not listed in the ceiling price book because apparently there wasn't any merchandise after July 1.

Q. The next item is one which I understood you to say is a duplicate of item No. 2, is that correct?—A. That is correct.

Q. And the proper highest delivered March price should be $24.95 for the same reason you advanced on item No. 2?—

A. Apparently here the Government didn't consider this as a violation.

Mr. AUSTIN. We are not claiming any violation under that.

Q. I notice that item here is described as a chimed barrelled chair and some place else was a high chair and a
865 barrel back.—A. That is correct. I wrote B B chair.

Q. The next item is not described by name. It is a sale to Perkins in March at $17.95 with one sale thereafter at $22.95. What did you discover with respect to that item?—A. The highest March delivery was $17.95; as one entry on guide card of 21950, June 9, but the sale previous to it and the sale on the very next day were at less than $22. In fact one previous to $17.95 was $15. We haven't been able to verify whether the entry of $22.95 was actually at $22.95 on the sales check.

Q. We haven't been able to disprove that?—A. That is correct.

Q. Was this item listed, Mr. Weitzberg?—A. No; it was not listed. Apparently there was no merchandise after July 1.

Q. This is described as style No. 157–732. Is that the item that you are talking about?—A. 157–732?

Q. Yes.—A. The guide card that I have in my hand shows 157–730.

Q. And that is the one that shows the sale at $22.95?—
866 A. Yes. It shows the alleged violation of $22.95.

Q. So the style No. should be 157–730?—A. Instead of 732.

Q. The next item, Mr. Weitzberg, is a sofa with an indicated March price of $89.95 and sales thereafter of $119.95, listed at $119.95. What did you discover with respect to that item?—A. This sofa was purchased in September together with three other similar type sofas and they originally retailed at $89.95 for the half-yearly sale which occurred in the latter part of January and February and early March. The number of this particular sofa is 195–733. The numbers of the other two sofas were 728 and 434.

On February 26 when these three type sofas went off the special sale they were marked up to the regular price of $119.95. The mark-up numbers were 34–12 and 34–13, as indicated on the guide card.

There seems to be some doubt about the correct ceiling on this because of the fact that these three sofas were brought in at the same time and apparently fall in the same group; the costs are the same; they were all marked at the same price at the same time and were marked down at the same time.

As a matter of fact, the sale to Isaacson, which was
867 delivered on March 9——.

Q. The one that is on the exhibit?—A. Yes; the one that is on the exhibit as style No. 733 was originally sold on February 21 as 159—434 and not as 733. Apparently they were out of No. 434 sofas and we substituted the 733 sofa, which, apparently, was satisfactory to the customer.

Q. The doubt in your mind arises, I take it, from the question as to whether these sofas can be considered the same item or a different item?—A. That is correct.

Q. Is it true that the 733 sofa sold at $89.95, the highest delivery price in March?—A. Yes; the highest delivery of the 733 sofa was $89.95 but the 434 sofa was delivered at $114.95.

Q. And the question, when you say "doubt" is whether the sofas are the same or different sofas?—A. That is right.

Q. Was this item listed at $119.95?—A. It was listed on page 5, line 19 at $119.95.

Mr. AUSTIN. What was that page again?

The WITNESS. Page 5, line 19.

Q. The next item, Mr. Weitzberg, is a club chair
868 indicated at a highest delivery March price of $19.95 and sales thereafter at $24.95 and listed at $24.95. What did you discover with respect to that item? What was the highest delivery price in March?—A. The highest delivery price in March was $19.95.

Mr. HORSKY. I notice, Mr. Austin, that the first two sales on that alleged to be after May 18 are dated May 1 and May 7. Is it contended that those were not improper?

Mr. AUSTIN. I think they appear to be so, from the exhibit itself. If the Court please, I think they should not be there.

Q. Do you find any of the other subsequent sales that were cancelled, Mr. Weitzberg?—A. There were three sales cancelled: Cobb, Johnson, and Viles.

Mr. AUSTIN. I think, if the Court please, for the purpose of the record I should object to that because the question as to whether the sales were later cancelled or not is not relevant. If there is a sale it is a sale and if it wouldn't be a sale there wouldn't be anything to cancel if it hadn't been a sale; and a sale at the price in excess of the maximum permitted by the regulation is a violation, and the fact that it was cancelled would
have nothing to do with it or would not bear upon the
869 question as to whether or not it was a violation.

Mr. HORSKY. Your Honor, I would like to elicit a few questions from the witness to explain our position on that, if I may, before I respond to Mr. Austin's comment.

The COURT. Yes; you may.

Q. Mr. Weitzberg, when a customer comes in and buys a piece of merchandise—excuse me—when a customer comes in and says she wants to buy a chair, one of these tickets is made up? Is that right?—A. That is correct.

Q. Now, suppose her credit turns out to be insufficient to warrant selling her the purchase, is then the sale cancelled?—A. Yes; that would be one of the reasons for a cancellation of a sale.

Q. In other words, the sale can be cancelled before it ever becomes a sale? Is that right?—A. That is correct. In other words, none of the sales are valid until they are accepted. In other words, all that the salesman does on the floor is actually take an order, and, first, the customer's credut has to be checked to see—if it is going to be a credit sale—if the customer is entitled to buy that particular piece of merchandise based on her credit status.

870 Q. Suppose the customer goes home and doesn't want the chair and calls up and says, "Cancel it," then is a cancellation put through?—A. That is correct.

Mr. HORSKY. Your Honor, for these reasons there is some relevancy as to whether the sale was actually consummated.

The COURT. It may remain.

Mr. AUSTIN. I ask an exception, please. I might further say, if the Court please, that on the basis of what counsel for the defendant has said each one of those items, if they were transactions handled in the manner which the counsel for the defendant has explained through the witness, that they may possibly have been handled they would constitute offers for sale which in actual sales themselves are violations of the regulation and the Emergency Price Control Act.

The COURT. Well, the transaction may be shown in the record. We will see what weight it shall have.

Mr. HORSKY. Thank you.

Q. The next item, Mr. Weitzberg, is a wing chair with an indicated March ceiling price of $28.88 and no price shown in the right-hand column. I take it that is not a price violation.

Mr. AUSTIN. That is correct.

871 Q. The next item is a platform rocker with an indicated March delivery price of $17.95 and sales thereafter at $22.95 and one at $29. Would you indicate what you found with respect to that item?—A. That was listed on page 9, line 21 at $22.95. The highest delivery price was at $17.95. The entry on the guide card at $29 to Sisk is incorrect; it should be $22.95.

Q. Do you have the sales check?—A. I have the Sisk sales check to indicate that.

Q. Would you show the Court the guide card?

The WITNESS (to the Court). This is the sales check of $22.95 and this is the entry on the guide card of $29.

Mr. HORSKY. I will offer these in evidence as Defendant's Exhibit 56 and 57.

(The documents were marked "Defendant's Exhibit 56" and "Defendant's Exhibit 57" and received in evidence.)

Q. The next item, Mr. Weitzberg, is a sofa with a highest indicated March price of $89.95 and sales thereafter at $119.95. Would you indicate what you found with respect to that item?—

A. Yes. I find a delivery at $119.95, style No. 195–434,
872 and that was one of the items I spoke about in connection with the No. 733.

Q. Do you have the sales check, Mr. Weitzberg?—A. Yes.

The WITNESS (to the Court). This is the style No. 195–434 for $119.95 delivered on March 31, sales check No. 11237–40.

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 58. That is a sale of a sofa with the style No. 195–434. Is that correct?—A. That is correct.

(The document was marked "Defendant's Exhibit 58" and received in evidence.)

A. That was listed on page 4, line 19 at $119.95.

Q. The next item, Mr. Weitzberg, is a living room suite at $89.95 with sales at $99.95. What did you discover with respect to that item?—A. That was listed on page 2, line 2 at $99.95.

Q. What was the highest delivery price in March?—A. The highest delivery was $89.95—this Charles Smith—and apparently the sale was cancelled in April.

Q. The sale to Smith?—A. Was cancelled in April.

Q. But it was delivered in March.—A. That is right.

873 Q. The next item is a suite, Mr. Weitzberg, with a March delivery price of $139.95 and sold at $159.95 and $169.95 thereafter. Would you indicate what you found with respect to that item?—A. Page 2, line 1, at $159.95. It was sold to a customer, J. S. Coisal, for $159.95 on February 3 and was originally scheduled to be shipped on March 2. After the merchandise was ready for shipment to Scott County, Tennessee, the customer made arrangements to hold the merchandise up in order to have slip covers made for that particular two-piece living room suite. On April 10, the merchandise was shipped out to the customer.

Q. So the highest delivered price in March is $139.95?—A. That is correct.

Q. Could you state whether this was listed?—A. Yes; I have already stated that.

Q. Thank you. The next item has no figures in the right

hand column. I assume it is not alleged as a price violation. Is that correct?

Mr. AUSTIN. That is correct.

Q. The next item is a fan chair with a March delivered price of $55 and one sale thereafter at $79.95 and not listed. Would you state what you found with respect to that item?—A. This was listed on page 7, line 13, $79.95.

Q. What was the highest delivered price in March?—A. According—I don't have the Jacobson sales check which is shown on this exhibit as a delivery of March 7, but there is an entry on the guide card showing a sale on November 15, 1941, for $55.

Q. To Jacobson?—A. To Jacobson. There is an entry on the guide card of March 6 which appears to coincide with the dates shown on the exhibit which is in red which would indicate not a sale but a credit.

There were no sales in March, and there was one exchange in March to a customer Powell. I don't have the exchange check but the entry on the guide card shows that—$59.95, and apparently $59.95 is the highest.

Q. In any event, it would still be sold above the highest March delivered price?—A. That is correct.

Q. Could you state—you couldn't find the sales check—where it could be that you didn't look for it?—A. When I started this investigation I asked the Adjustment Bureau to send over to the room in which I was working all the checks showing March deliveries. It took me about three or four days to get all of the sales checks together.

During my investigation I found, from time to time, that some of the checks I wanted were not in the file they had sent to me. When I checked with the Adjustment Bureau they would find the sales check. Sometimes they overlook it in the files. It may have been in someone's possession and being worked on and put back into the file after I had asked to have all the checks pulled out.

Q. This was apparently available because the items were copied off it.—A. It might have been a credit they copied it from.

Q. The number of the sales check is noted on the exhibit. Is that not true?—A. Yes.

Q. And were the checks put back after the exhibit—I mean after the examination by the OPA people, or what happened to them physically, do you know?—A. They were put back into the files because apparently that is where they got the checks when they sent them to me.

Q. In other words, it has gotten lost somewhere in that

shift?—A. Yes; it has gotten lost, and the only thing that I can see is the fact that this entry of March 6 which
876 indicates a credit and not a sale——

Q. Wouldn't your conclusion be, Mr. Weitzberg, if this exhibit appears here as having been copied from the sales check that there was a sales copy from which it was copied?—A. There must have been a sales check to copy the numbers from.

The COURT. That will be all for today.

(Whereupon at four o'clock p. m., Tuesday, January 26, 1943, the hearing in the above-entitled matter recessed until ten o'clock a. m., Wednesday, January 27, 1943.)

* * * * * *

880 PROCEEDINGS

Mr. JAMES. Will your Honor excuse me? I want to work out the law of the case somewhat further.

The COURT. Yes; what exhibit are you on?

Mr. HORSKY. We are using Plaintiff's Exhibit 13a, your Honor, the first page.

OSCAR WEITZBERG, having been previously sworn, resumed the stand; was examined and testified as follows:

Redirect examination by Mr. HORSKY:

Q. I think, Mr. Weitzberg, that you had finished the explanation of the fourth item from the bottom, the sale to Mrs. Jacobson, the sale to Helen Jacobson, a chair at $55.00, and subsequent sale at $79.95. Is that correct?—A. That is correct.

Q. The next item, Mr. Weitzberg, is a chair, an indicated highest March delivery price of $59.95, and sales thereafter at $69.95. Would you indicate what you discovered with respect to that item?—A. Yes; the sale to Sylvia Kirpatrick was made on January 21. It was originally supposed to be delivered on February 14. The customer called us and asked us to hold the merchandise, which we did, and we subsequently delivered that on March 2. There were no March sales, and the mer-
881 chandise apparently was offered at $69.95 during the month of March. The merchandise sold for $69.95 in the—in 1941.

Q. The highest delivery price is $59.95, is that right?—A. That is right. The first sale after March didn't occur until April 2.

Q. The item is stated to be listed at $59.95. Is that a correct statement?—A. No; it is not. The Government investigator

apparently put that down wrong. It is listed at $69.95 on Page 7, Line 6.

Q. The next item, Mr. Weitzberg, is a chair with no figure on the righthand column. I take it that that is not alleged to be evidence of any sales above ceiling price.—A. I assume it is not a violation.

Q. And the last item on the page, Mr. Weitzberg, is a sale of an occasional chair at $17.95 in March with a subsequent sale of $19.95, and indicated as not listed. Would you explain what you found with respect to that item?—A. Yes; the sale to Dodd was on February 28. It was delivered on March 4, at $17.95. The sale to Dodd was the last piece of this merchandise at that time. Subsequent to that date, on or about the 18th of March, a piece was returned to stock. The customer had cancelled the sale, and that particular piece was then sold at $17.95 on March 23. This customer cancelled the sale on June 24. It was subsequently sold on July 17 at $19.95. What apparently happened was some mistagging of merchandise.

882 Q. When it was returned to the store?—A. That is correct, after the sale previous to this last sale.

Q. Is this listed, Mr. Weitzberg?—A. No; it was not listed.

Q. The first item on the second page of this exhibit is another chair at $17.95, and another sale at $19.95, also indicated to be not listed. Would you state what you found with respect to that item?—A. This is the same style number as the one I previously testified to.

Q. And the same explanation?—A. Yes; the same explanation. In this case the sale to Beuchert was cancelled on March 25. The Beuchert sale is the sale on which the ceiling is based on this line, and again a sale was cancelled after the last piece had been sold, and the piece was mistagged and sold on August 5 for $19.95.

Q. Was this listed, Mr. Weitzberg?—A. No; this was not listed.

Q. The next item is an ottoman and chair with an indicated March price of $29.95, and three sales thereafter at $36.95, indicated to be not listed.—A. The regular price of this merchandise was $36.95, and was marked down on January 13, 1942, to $29.95 for the half-yearly sale. After the half-yearly

883 sale was over it was marked back to $36.95, and was offered for sale at $36.95. The first sale at $36.95 after the half-yearly sale was on April 3.

Q. What was the highest delivery price in March, however?—A. $29.95.

Q. $29.95. This is stated to be not listed. Is that cor-

rect?—A. No; that is not correct. It is listed on Page 8, Line 28.

Q. At what price?—A. At $36.95.

Mr. AUSTIN. Can we refer back a minute, Mr. Weitzberg, to the third item from the bottom on the first page? Will you look then on the October 10 Supplement of the ceiling price list, the 11th item down, club chair, 59-3, Style 933, loose pillow back?

The WITNESS. What page did you say it was on?

Mr. AUSTIN. Well, it is on the October 10 Supplement. There is no number on the page. Did you find it?

The WITNESS. Yes; I have it here.

Mr. AUSTIN. Well, now; that description is similar to the description of the item on the exhibit?

The WITNESS. Yes.

Mr. AUSTIN. Can you say that that is not the item?

The WITNESS. Do you mind if I refer to—well, the description seems to be similar. The only thing I can't understand is why it would appear on the October 10 Supplement, because after all this was—we had this merchandise in stock during March and April and May, and May was the month when Mr. Crone testified he established his list.

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Mr. AUSTIN. Do you have the sales check there for Kirpatrick?

The WITNESS. Yes, I do.

Mr. AUSTIN. The description of that chair on the sales check corresponds with the description on the exhibit, does it not?

The WITNESS. That is right, it does.

Mr. AUSTIN. In other words, it refers to an LPB chair?

The WITNESS. Yes.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a maple platform rocker with an indicated highest delivery price in March of $11.95, and 12 sales thereafter at $13.95, and indicated as listed at $13.95. Would you state what you discovered with respect to that item?—A. Yes. The highest delivery in March was not at $11.95 as is indicated by the exhibit, but at $13.95 to customer Baber.

Q. Do you have the sales check?—A. Yes; I have.

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Q. That is 704121½?—A. That is correct, at $13.95.

Mr. HORSKY. I will offer that in evidence, your Honor, as Defendant's Exhibit 59.

(The document was marked "Defendant's Exhibit No. 59" and received in evidence.)

Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is an adjustable chair with an indicated highest delivery March price of $18.95, and a series of sales thereafter at $24.95 indicated as being not listed. Will you state your conclusions with respect to that item?—A. This chair was listed in the three-piece suite under 219, 280, and 281. This is on Page 1, Line 1. The 219 indicates the sofa, the 280 is the wing chair, and the 281 is the adjustable chair.

Q. What was the highest delivery price in March, Mr. Weitzberg?—A. Well, in the suite it would figure at $20.00. If it was a separate chair, it would figure at $19.95.

Q. In any event, the sales of $24.95 were above the highest delivery price?—A. That would be above the $20.00, that is correct.

Q. The next item, Mr. Weitzberg, is a platform rocker.

Mr. AUSTIN. Mr. Weitzberg, referring to Page 1, Line 1 of the ceiling price list for Department 59, this adjustable
886 chair does not—which appears as Item 4 of the second page of Plaintiff's Exhibit 13—does not appear listed separately, does it?

The WITNESS. No; it is listed in the three-piece suite. I think in your copy it is indicated as a two-piece suite, which is a typographical error. Each of those numbers—that is 219 is the number of the sofa, 280 is the number of the wing chair, and 281 is the number of the adjustable chair.

Mr. AUSTIN. It is listed here as a two-piece suite, but the numbers are——

The WITNESS. I have a pencil correction here as three.

Mr. AUSTIN. The numbers are given here. However, what I want to make clear is that the ceiling price, if there was one, for the individual items making up that suite do not appear on the ceiling price list, do they?

The WITNESS. No.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is the platform rocker with an indicated delivery March price of $25.95, and one sale thereafter at $29.95, and it is stated it is not listed. What did you discover with respect to that item?—A. The highest delivery price in March was at $24.95, and the sale at $29.95 on September 30 was cancelled on October 26.

Q. Was it listed?—A. No; that was not listed.

887 Q. The next item is a wing chair with an indicated highest delivery March price of $16.95, and sales thereafter at $19.95 and $24.95.—A. Well, this is the companion

piece, or rather the wing chair, No. 280 of the 219, 281, 280 three-piece suite that I testified about just a minute ago.

Q. Which is listed at Page 1, Line 1 as a suite?—A. That is right, and the ceiling price on this would be $20.00.

Q. How do you determine that, Mr. Weitzberg?—A. By fixing a value on the sofa of $49.95, the adjustable chair at $20.00, and the other chair at $20.00.

Q. How do you determine that?—A. I don't happen to have the sofa guide card here. That is the one that is in the inventory, but if I recall correctly, one of the sofas was offered for sale or delivered in March at $49.95, and after all, the sum of each of the parts would be equal to the $89.95. If it is selling for $89.95 then each of the component parts would have to have a value attributed to it to make up the total of $89.95.

Q. I am trying to find out how the allocation is made, that is, the regular allocation.—A. That is the customary allocation for a three-piece suite.

888 Mr. AUSTIN. For the purpose of the record, if the Court please, I'd like to note an objection to the preceding four questions and answers as being irrelevant.

By Mr. HORSKY:

Q. Mr. Weitzberg, upon what basis did you state that the highest delivery price in March was $19.85? Do you have a sales check?—A. No. On the basis of $89.95 established ceiling for the three piece suite.

Q. Was that delivered in March?—A. Yes. I don't have the—as I said before, those are in the process of being worked on in inventory. The card may be available sometime today or tomorrow because the inventory was finished on Saturday, and I think they just finished making the tabulation yesterday.

Mr. AUSTIN. You say this wing chair is part of the suite you testified to previously?

The WITNESS. That is right.

Mr. AUSTIN. It does not appear on the ceiling price list?

The WITNESS. That is correct.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a high wing chair with an indicated highest delivery March price of $16.95, and a number of violations at $19.95, indicated as being not listed. Will you state what you found with respect to that item?—A. This is listed on Page 1, Line 13 as a two piece living

889 room suite, 237 at $49.95.

Q. The items are not separately listed?—A. No, it is not separately listed, and I determined the highest value of

the chair and the sofa as follows: $29.95 for the sofa, and $20.00 for the wing chair.

Q. And what was the price at which the suite was sold in March?—A. At $49.95, and was delivered at $49.95.

Q. Do you have such a sales check?—A. Yes. I don't have the delivery check, but I do have the tissue and the delivery sheet in this case.

Q. Will you indicate to the Court what you find from those?—A. This is the 672327 two piece living suite at $49.95.

Q. And the—what is the date of the sale?—A. The date of the sale was on March 14, and promised for delivery on March 17. It was delivered on March 19 as indicated by this entry. This is L which indicates the first name of the customer. 1727 is the house number, and the number of pieces in the column to correspond with the number of pieces that were delivered.

Q. What is the sheet that you are showing the Judge now?—A. That is the delivery sheet, which is a secondary record indicating delivery. In other words, this is the sheet that each driver is given at the time he leaves the warehouse,
890 and he has to account for every piece on here. The receipt that the customer signs, which is the delivery check, is the one that the Adjustment Bureau gets, and the warehouse keeps this as their record of the completion of the delivery.

Q. You can't find the delivery check?—A. No, we couldn't find the delivery check. We had to trace it down this way.

Mr. HORSKY. I will offer those in evidence, your Honor, as Defendant's Exhibits 60 and 61.

(The documents were marked "Defendant's Exhibits 60 and 61" and received in evidence.)

Mr. AUSTIN. Now, Mr. Weitzberg, the sale and delivery of that chair to Mr. Elliott, does that indicate the highest delivery price for that wing chair sold separately in March and delivered in March?

The WITNESS. Yes, as a separate chair it was the highest.

Mr. AUSTIN. If the Court please, then we will interpose the same objection to this testimony with respect to the sales check and—pardon me, not the sales check, but the tissue and the delivery sheet supposedly showing a delivery—sale and delivery of a combined unit including this high wing chair as we made to the preceding item.

The COURT. Yes. You have your exception.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a suite with an
891 indicated highest delivery March price of $119.95, and one sale thereafter at $139.95, stated to be listed at

$139.95. Will you indicate what you found with respect to that one?—A. The highest delivery of this item is $119.95, although it sold in January at $139.95. This was sold during the half-yearly sale at $119.95. The sale on July 8 at $139.95 was cancelled on July 16.

Q. Is it listed at $139.95?—A. Yes, it is listed at $139.95 on Page 3, Line 31.

Q. The next item has no figure in the right-hand column. I assume we need not consider that one.

Mr. AUSTIN. That is right.

By Mr. HORSKY:

Q. The next one is a living room suite with the highest March delivery price at $73.03, and a single sale thereafter at $99.95, with an indicated ceiling listing of $139.95. What did you discover with respect to that?—A. This item was brought in for a special sale at $73.03. It was brought in originally at $106, to retail at $100, and it sold in February at $100. There was a sale on February 23 at $100. The merchandise was delivered on February 26. The merchandise was then reduced for the sale and sold at $73.03 in March, and delivered at that price.

Q. That is the highest delivery in March?—A. That is correct.

892 Q. And was it listed at $139.95?—A. It was listed at $139.95.

Q. The next item is a suite with an indicated highest delivery March price of $89.95, and a sale thereafter at $109.95, with an indicated listing of $89.95. What did you discover with respect to that item?—A. The highest delivery in March was at $89.95. I haven't been able to find the Thomas check of July 2 at $109.95 to check to see whether the entry on the guide card is correct. On July 30 there is a cancellation at $89.95, customer Thomas, but there seems to have been a prior sale to a Thomas in March at $89.95, and I can't tell—I haven't either of those slips of paper to tell whether the $89.95 cancellation refers to the first Thomas sale or to the second Thomas sale.

Q. We have no documents which will disprove this, in other words?—A. That is right.

Q. And was it listed at $89.95?—A. Yes, it was listed at $89.95.

Q. The next item, Mr. Weitzberg, is a sofa at an indicated March highest delivery price of $79.95, and a sales thereafter at $89.95, indicated as listed at $89.95. What did you discover with respect to that item?—A. The sale to Taylor was made on

January 31 at $79.95, and delivered on March 10. There
893 were four sales in March at $89.95.

Q. Were any of them delivered in March?—A. Well, of the four checks there is one that indicates it was promised for delivery on March 26 to customer McGrath at $89.95, but we haven't been able to find the delivery copy or the delivery sheet to indicate that was actually made in March.

Q. You can't tell whether it was delivered in March or not?—A. That is correct.

Q. Was it listed at $89.95?—A. It was listed at $89.95.

Q. The next item, Mr. Weitzberg, is a chair with an indicated highest delivered March price of $44.95, and sales thereafter at $49.95. Will you state what you found with respect to that one?—A. This was brought in for the half-yearly sale in January, and sold at $44.95 during the sale. There were no higher deliveries than $44.95. That was the highest delivery in March.

Q. Was it listed at $49.95?—A. Yes; on Page 2, Line 23.

Q. The next item, Mr. Weitzberg, is a chair with an indicated highest delivery March price of $70.95, and a sale thereafter at $74.95, indicated to be not listed. What did you
894 discover with respect to that item?—A. The investigator for the Government listed this at 395, 396.

Q. 394.—A. 394–E57.

Q. It is listed at 394–E95.—A. It should be E57.

Q. E57?—A. That is right.

Q. Does that so appear on the check?—A. Yes, it so appears on the check. Apparently the error occurred in their copying the style number of the item listed above on the sales check.

Q. Thank you. What is the highest delivery March price of this item of this 394–E57?—A. $70.95, to customer Hansen. This chair was subsequently cancelled on April 10, and the same chair was sold to Blake, which is the name here, at $74.95.

Q. The same chair, establishing the ceiling, and also establishing the sale above ceiling price?—A. That is right.

Q. Is it listed?—A. It is listed on Page 5, Line 17, at $79.95.

Q. The next item is a chair, apparently three chairs. I am not clear exactly what the exhibit does mean, but it is
895 an indicated March price at $34.95 for either one of three chairs, and sales thereafter at $36.65 and $39.95. What did you discover with respect to that item?—A. The sale to Joseph Mesina was made on November 27, 1941, and was charged to the customer's account at that time. At the customer's request it was put aside for him in the warehouse, and it was delivered on March 9. The last piece of this particular item was sold on February 23, 1942. We had no stock on

hand, and there was—there were no sales made in March. The first shipment of new items after it was reordered was in July, and was first offered for sale in August.

Q. Is this listed, Mr. Weitzberg?—A. No; it is not listed.

Q. And the sales at $36.65 and $39.95 were above the highest delivery price?—A. That is correct.

Q. The next item is a two piece living room suite with an indicated highest delivery March price of $149.95, and four sales at $169.95, indicated as being listed at $199.95. Will you state what you discovered with respect to that item?—A. This merchandise sold regularly during 1941 at $169.95.

Q. What was the highest delivery price?—A. The highest delivery price was $149.95 because we took a mark-down for the special sale in March to $149.95.

896 Q. Was it listed at $199.95?—A. It was listed at $199.95 on Page 3, Line 7.

Mr. AUSTIN. Do you have the guide card for that?

The WITNESS. Yes.

Mr. AUSTIN. This is off the record.

(Off the Record.)

Mr. AUSTIN. Do you know, Mr. Weitzberg, how that listed ceiling price was determined?

The WITNESS. Except from what Mr. Crone testified to yesterday, that he went on the floor and took it from the—took it from the price tags on the floor.

Mr. AUSTIN. You don't see any indication on that entire guide card that this ever sold at $199?

The WITNESS. No; but it was tagged at $199.95. The guide card does show that.

Mr. AUSTIN. In other words, Mr. Crone did just what he said he did, he went out and took the tag prices off the merchandise?

The WITNESS. He testified to that.

Mr. AUSTIN. That is all.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a chair with an indicated March delivery price of $11.95, and five sales thereafter at $14.95, indicated as being listed at $14.95. Could you state what you discovered with respect to that item?—A. Yes;

897 it was listed on Page 6, Line 4 at $14.95, and the highest delivery was at $14.95 and not at $11.95 as the Government investigator listed on the sheet.

Q. Do you have the sales check?—A. Yes; I have.

Mr. HORSKY. I will offer it in evidence, your Honor, as Defendant's Exhibit 62.

(The document was marked "Defendant's Exhibit 62" and received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a chair at an indicated highest delivery March price of $44.95, and a sale thereafter at $54.95, indicated to be listed at $54.95.—A. Yes; it was corrected, listed at $54.95 on Page 7, Line 20. The investigator for the Government shows the highest delivery at $44.95. The highest delivery was at $54.95, sales check No. L1236-40, and was delivered on March 13 at $54.95. The sales check is among the exhibits now.

Q. Which check was it, Mr. Weitzberg?—A. It is to Lt. Lache.

Mr. AUSTIN. If the Court please, we are familiar with that sales check.

Mr. HORSKY. You don't want to see it?

Mr. AUSTIN. No.

By Mr. HORSKY:

898 Q. The next item, Mr. Weitzberg, is a chair with an indicated March price of $44.95, and two sales thereafter at $54.95, stated to be listed at $54.95. What did you discover with respect to that item?—A. This too is correctly listed on Page 2, Line 20 at $54.95, and the highest delivery was not at $44.95 but at $54.95, sales check No. 13285-26 delivered on March 26 at $54.95.

Q. Do you have that check?—A. I have.

Mr. HORSKY. I will offer it in evidence, your Honor, as Defendant's Exhibit 63.

(The document was marked "Defendant's Exhibit 63" and received in evidence.)

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, the last item on this exhibit is a chair with an indicated highest March delivery price of $39.95, and one sale thereafter at $49.95, stated to be listed at $49.95. What did you discover with respect to that item?—A. It was listed on Page 6, Line 24 at $49.95. The highest delivery, however, was at $39.95.

Q. And the sale is above the highest delivery?—A. That is correct.

Mr. HORSKY. Did you have any further questions on this exhibit, Mr. Austin?

Mr. AUSTIN. No.

899 By Mr. HORSKY:

Q. Mr. Weitzberg, I hand you Plaintiff's Exhibit 14a through e, and ask you if you have checked to see whether any of these items indicated on the exhibit actually appear on a sub-

mitted price list prior to October 10, 1942. Have you made such a check?—A. Yes, I have.

Q. Will you indicate to the Court which ones, if any, are listed and where?—A. Well, the first one I see here is the 6772237 high wing chair that I testified to before which was listed——

Q. I can't find it on the exhibit, Mr. Weitzberg. Where is it?—A. On the exhibit. It is the eighth item down.

Q. Thank you. I have it.—A. This was listed together with the two piece suite.

Q. And not listed separately?—A. That is correct.

Mr. AUSTIN. It isn't listed as a high wing chair, is it?

The WITNESS. No, it is not listed separately.

By Mr. HORSKY:

Q. Do you find any other items that are listed?—A. Yes, on Page 3, the third item from the top, No. 87377½. That is listed on Page 2, Line 27.

900 Q. The sixth item from the bottom?—A. That is correct, at $49.95.

Q. Do you find any others?—A. Yes; the fifth item below that is No. 195434, Chesterfield sofa, and that was listed on Page 4, Line 5. That was one of the items that I testified to in the previous exhibit.

Q. Do you find others?—A. Yes; the third item below that, 3584202. That is listed on Page 14, Line 25. Those were all.

Q. I beg your pardon?—A. Those were all.

Q. I don't find that last one, Mr. Weitzberg. I don't find that many pages.

Mr. AUSTIN. Is that in the original list?

The WITNESS. The date that I have is October 10.

By Mr. HORSKY:

Q. An item on the page, is it?—A. It is the fourth from the bottom. Which schedule are you referring to, Mr. Horsky? Is it the ceiling price list or the exhibit.

Q. I have it, Mr. Weitzberg, thank you. It is the second page of the October 10 item, is that correct?—A. This appears as my third page.

Q. Perhaps my pages are in a different order.

Mr. HORSKY. Do you find it, Mr. Austin?

901 Mr. AUSTIN. Yes; do you have an OPA 7 for that?

The WITNESS. Do I have one here?

Mr. AUSTIN. Yes.

The WITNESS. I may have one in my bag.

Mr. AUSTIN. Do you know whether one was made out?

The WITNESS. Presumably one was made out because these supplement lists were only made out from OPA 7's.

Mr. AUSTIN. I was just wondering how you accounted for a ceiling price of $139.95, and then a sales at $79.95, and $99.95, and here is a sale as late as October 10 at $99.95.

The WITNESS. All I can say is that the buyer had to make a comparison with a similar item of equal serviceability, and presumably at the same comparable cost.

Mr. AUSTIN. That is all.

By Mr. HORSKY:

Q. I hand you, Mr. Weitzberg, Plaintiff's Exhibit 15, and ask you if you made an investigation of that exhibit. You have investigated this exhibit?—A. Yes, I have.

Q. This exhibit indicates various items, Mr. Weitzberg, on which the ceiling price varies from the first sale and subsequent sales of these items, and I think Mr. Kaplan stated that that created a doubt as to the propriety of the ceiling price. Have you taken the first item on this exhibit?—A. Yes, I have.

902 Q. Can you tell me the reason why the ceiling price is at $34.95 and the sales at $29.95?—A. The first item was apparently not on the ceiling price book, was not originally listed.

Q. That is, there is no——A. No; that is the SH chair, Sleepy Hollow chair. We have a platform rocker with a similar number, 672256, which is listed.

Q. I refer to the October 10 supplement.—A. I think it is Page 13, Line 8, rocker, platform, Style No. 2563495.

Q. And this is, you say, a Sleepy Hollow chair?—A. Yes; the one that is referred to in the Government exhibit is a Sleepy Hollow chair.

Q. What is the proper ceiling price on the item which is listed on the exhibit, if you have it?—A. It is $29.95 in our new ceiling price book.

Q. Based on an OPA 7?—A. That is correct.

Mr. AUSTIN. When was this new ceiling price book initiated, Mr. Weitzberg?

The WITNESS. Well, I believe the OPA 7's were in the process of being worked on at the time the investigators first came down, and it was after we found difficulty in starting—in locating items in this type of book that we decided to simplify

903 the method of referencing items so that it is much easier to find a particular item in any category. In other words, under this type of listing it is a little difficult for us to locate a particular item from a particular manufacturer. Given the manufacturer's number we have to go through every page

to locate the item we are looking for, whereas under our new method each page indicated a different manufacturer, and one of the reasons for making the change was to simplify the way we would locate an item in the ceiling price book.

Mr. AUSTIN. In other words, this item was not on the cost-of-living statement for a period of three months after it should have been?

The WITNESS. Something, I think, should be cleared up on that. Mr. Crone testified yesterday about the merchandise that he had purchased early in the spring of 1942.

Mr. AUSTIN. Yes; I understand what Mr. Crone said.

The WITNESS. Well, I spoke to him about that to get something clear in my mind, because it seemed that there were a lot of items that were not listed, and we found the explanation, and it is this, that when the merchandise was received at the warehouse, the one he referred to, away from the store and out of the city, a guide card was made up to indicate that that merchandise was in stock, although it was not in the city, and wasn't offered for sale. It wasn't sent to the floor, but the guide card would show a receipt of merchandise in the
904 warehouse because we had to pay for that merchandise immediately upon receipt. It wasn't until sometime later that the merchandise did arrive at our warehouse.

Mr. HORSKY. Did arrive at the store, you mean?

The WITNESS. The warehouse here at the store, so I think you will notice from a number of these exhibits that the date of receipt occurs much earlier than the date of the first sale.

Mr. AUSTIN. When was this first sold, do you know? Do you have the guide card?

The WITNESS. No; I don't have the guide card here.

Mr. AUSTIN. At any rate, the ceiling price on this and its entry on a cost-of-living statement was not until sometime in October or later?

The WITNESS. That is correct.

Mr. AUSTIN. That is all.

By Mr. HORSKY:

Q. The next item, Mr. Weitzberg, is a platform rocker with original and subsequent sales at $16.95 and ceiling price at $22.95. Would you state what you discovered with respect to that?—A. This merchandise was received on June 28, and was originally sent to the floor on July 8 at $22.95 with a drop tag to $16.95.

Q. Will you explain what a drop tag is?—A. The drop
905 tag is the price—on the furniture departments there—in the furniture departments there are two tags. One

is the price of the merchandise regularly, and the drop tag is the price the merchandise is marked down to.

Q. For sale you mean?—A. For sale, and the ceiling of $22.95 was established by comparing with a No. 672–260.

Q. What did you discover with respect to the next item?—A. The next number 704125, which is indicated as not sold in March, was sold in March at $5.95, and was so delivered.

Q. Do you have the delivery check?—A. That is right. In other words, the delivery was established based on the highest delivery.

Q. Ceiling price?—A. Ceiling price was established on the highest delivery.

Mr. HORSKY. I will offer that check in evidence, your Honor, as Defendant's Exhibit 64.

(The document was marked "Defendant's Exhibit 64" and received in evidence.)

Mr. AUSTIN. What is the price that usually is put on this drop tag as compared to the retail that appears on the confirmation, Mr. Weitzberg, do you know?

The WITNESS. Offhand I wouldn't say. I don't know just what the pricing method is. I know that they do use the drop tag method. I mean that is a method that is used in furniture departments here in the city and in other cities, as well,
906 but just how the buyer would establish the item I don't know. I mean, of course, it would appear to depend upon when the merchandise comes in. In other words, if it is a week before a sale or two weeks before a sale—I mean it would all depend on when it comes in and what events he is planning, so I couldn't say offhand the method of establishing the price tag and its comparison with the confirmation price. That was one of the reasons—there would be, for example, a difference between the confirmation price and the price tag. It might be a sale was being planned two weeks subsequent to the date of delivery of the merchandise. The confirmation would show the sale price in order not to show a big mark-down. It would be offered prior to the sale at higher than the confirmation price, at the ceiling price or below the ceiling price, but that price would not necessarily have to be the price at which the merchandise came in. That is the confirmation price.

Mr. AUSTIN. You mean it sold at a different price than the confirmation price?

The WITNESS. That is right.

Mr. AUSTIN. Was a mark-up run there?

The WITNESS. Yes, sir. In that case a sold goods mark-up would have to be made out.

Mr. AUSTIN. In other words, the mark-up doesn't run through until the merchandise is sold?

The WITNESS. That is correct. In our particular
907 cases it doesn't have to appear after it is sold. It is after a piece is removed from stock.

Mr. AUSTIN. That is when it is sold, isn't it?

The WITNESS. Well——

Mr. AUSTIN. You don't remove it—what do you do with it if you remove it from stock and don't sell it?

The WITNESS. As I think I explained yesterday—I don't think I explained it fully—this is what happens to the different parts of the sales check. A salesman takes an order on the floor, and actually it is only an order until credit is passed upon. The original copy of the sales check and the delivery copy of the sales check are sent to the credit office for credit to be passed upon. The customer's copy of the sales check is sent to the warehouses so that the piece of merchandise can be pulled immediately. It will take some time in our warehouse to locate a piece of merchandise on the floor and bring it down so it can be polished, uncrated, if it is that type of merchandise, or assembled so that the customer can have prompt delivery.

Of course, the merchandise is not sent out until after the credit office approves the sale; at which time the delivery copy of the sales check would show the stamped approval of the credit office, and that would be sent to the warehouse, where it would have to be matched with the customer's copy. In other words, these two pieces of paper are being worked on simultaneously
908 in two parts of our organization, and when they meet on the platform, it means that the merchandise can be shipped out to the customers.

At the time the merchandise is pulled from its location in the warehouse an entry is made on the guide card. In other words, the entry on the guide card is made from the customer's copy of the sales check and not from the delivery copy, so that although there is an entry—that is why we see an entry one day in black, or maybe two or three days later another entry showing either the sale didn't go through, a voided sale, or the customer canceled, or some other reason for not consummating the sale.

Mr. AUSTIN. But it is treated as a sale in the store until—and the goods is set aside for that customer until the credit is shown to not be worthy or some other reason the matter is cancelled?

The WITNESS. That isn't so. It isn't treated as a sale.

Mr. AUSTIN. You won't sell that same piece two or three times?

The WITNESS. No; but here is what happens if the credit office voids the sale. For example, one of the things we have right here in the furniture department is to get a down payment of either 20 percent or 33⅓ percent, depending on the type of merchandise. Now, if the customer can't make the down payment, or decides not to make the purchase because the down payment is too high, then the credit office cannot pass the sale. That would be in violation of Regulation W.

Mr. AUSTIN. I understand that; up to that time, and
909 after the salesman has written up the check, that is treated as a sale? In other words, that is merchandise that is considered to be set aside for that customer, isn't it?

The WITNESS. Yes; but I don't know how we can consider that as a sale.

Mr. AUSTIN. I am not discussing the matter as to whether it is a sale or not. I am just getting back to your question about removing it from the floor.

The WITNESS. Well, I mean the same thing might happen without that. A sales person might be waiting on a customer, and the customer says, "I like that piece"; and the salesman might say, "That is the last piece we have in stock. That is the last piece on the floor." "Well, I don't want to make my selection right now. I'd like to have my husband come down." Well, the salesman might put a tag on their "Sold" although it actually wasn't sold, no sales check was written. In other words, he would reserve it for the customer. I don't think we could consider that as a sale.

Mr. AUSTIN. Oh, no.

The WITNESS. The next is exactly the same. We are setting it aside until we can check all the various points.

By Mr. HORSKY:

Q. To go back to Mr. Austin's original question, it is true in the furniture department, is it not, Mr. Weitzberg, that sometimes the merchandise will be brought in for a sale,
910 and the confirmation will show the sales price, or styles will be brought in at a higher price, and a drop ticket put on it to show the sales price?—A. That is right.

Q. It may be done either way?—A. That is correct.

Q. The next item, Mr. Weitzberg, is a chair, Style 25W, an original sale at $7.95, and a ceiling price at $9.95. Will you explain what you discovered on that item?—A. Although this is listed on this schedule as not having been sold in March, it was sold in March and delivered in March at $9.95.

Q. Do you have the sales check?—A. Yes; I have.

Mr. HORSKY. I will offer that in evidence, your Honor, as Defendant's Exhibit 65.

(The document was marked "Defendant's Exhibit 65" and received in evidence.)

By Mr. HORSKY:

Q. What did you find with respect to the next item?

911 The WITNESS. May I ask a question?

Mr. HORSKY. You had better give your answer, Mr. Weitzberg.

The WITNESS. I want to be sure I understand the schedule. I want to answer the question, and I do not understand one of the headings here.

The COURT. He may.

The WITNESS. Do I understand this original column means original sale?

Mr. HORSKY. First sale.

The WITNESS. Yes; that is what I understand it to be.

The COURT. Will you answer his question, Mr. Austin?

Mr. AUSTIN. Just a moment. That is the original price as listed there—that is that number on the confirmation, and I believe that guide card has the original retail.

The WITNESS. That is not what I assumed it to be yesterday. I thought that is what you meant originally.

Mr. AUSTIN. You were not talking about this exhibit yesterday, were you?

The WITNESS. It was a similar exhibit, and that is why I was confused, because I don't want to go back now because if I testify that it is the original sale, I want to make sure it is the original sale.

Mr. AUSTIN. You were not telling anything inconsistent yesterday, were you?

912 The WITNESS. No—I mean on the confirmation.

The COURT. He wants to see whether this is the same as the Confirmation.

Mr. AUSTIN. I think I answered that, if the Court please.

The WITNESS. Then this is not listed correctly, because the Confirmation price is $94.95.

Mr. HORSKY. I think you have a different item from what I am looking at.

The WITNESS. 6339.

Mr. HORSKY. Yes; that is right. Thank you.

The COURT. What is the Confirmation price?

The WITNESS. That was $94.95.

By Mr. HORSKY:

Q. That price appears on Confirmation No. 50833, Mr. Weitzberg.—A. Yes; it is so indicated on the guide card.

Q. What did you discover with respect to the next item?—A. 658½?

Q. Yes.—A. Sofa?

Q. Yes.—A. The original price on the Confirmation was $79.95, and it was tagged $99.95.

913 Q. Was it sold or delivered in March?—A. No; this was an item that was received on March 26th and sampled on March 27th with a $99.95 tag on it—price tag.

Q. And those items which sell at that price had a drop tag, as you described it?—A. That is right.

Mr. AUSTIN. Do you know whether or not the drop tag was on the 27th of March?

The WITNESS. The only information I have is this guide card. The only information I can testify to is the guide-card information.

Mr. HORSKY. What does that show?

The WITNESS. Well, it shows the tag $99.95 and it shows the first sale of this merchandise—the very first sale of this particular item on April 20th at $99.95.

Mr. HORSKY. At the highest price?

The WITNESS. That is right.

Re-cross-examination by Mr. AUSTIN:

Q. Now, getting back to my original question, you do not know whether there was a drop tag on this at $99.95 or some other price?—A. Except on the guide card.

914 Q. There is no information on the drop tag?—A. Oh, yes; there is.

Q. What does it say?—A. It says, "Sale, $99.95."

Q. That is the original?—A. No; the original on the Confirmation was $79.95.

Q. Then you marked it up, is that it?—A. No.

Q. How did it get up?—A. That was the price at which the merchandise was shown on the Confirmation.

Q. Wait a minute—what price on the Confirmation?—A. $79.95.

Q. Then the first sale was at $99.95?—A. That is right.

Q. Then there was a mark-up run through on that?—A. No; there is no mark-up, because the thing was $99.95—yes; correct—there would be a mark-up which would be a sold goods mark-up.

Q. Did you approve that?—A. I don't recall whether I did or did not.

Q. Did Mr. Brown approve it, or do you know?

Mr. HORSKY. Let me see. When was this first sale, Mr. Weitzberg?

915 The WITNESS. The first sale was on April 20th, which was at least a week before we issued any instructions about sold goods mark-ups, and it was ten days before the GMPR went into effect.

Q. Well, are mark-ups approved anywhere else besides by the buyer and the merchandise manager, if they are approved by them?—A. Sold goods mark-ups or regular mark-ups?

Q. Any mark-ups.—A. They have to go through the merchandise control. There are certain times in the year when we put special controls on mark-ups, and at that time they would all have to be countersigned by Mr. Brown and myself, but ordinarily the buyer signs the mark-up and his merchandise manager approves it.

Mr. HORSKY. Is that all?

Mr. AUSTIN. Yes.

Re-direct-examination by Mr. HORSKY:

Q. What did you find with respect to the next item, Mr. Weitzberg, 174–744?—A. This merchandise was received on March 26th; was sampled on March 28th and tagged $49.95.

Q. $49.95?—A. That is correct.

916 Q. Then the ceiling price listed is lower than the proper ceiling price?—A. That is correct.

Q. What did you find with respect to the next item?—A. What number is that?

Q. That is 174—4209, a sofa.—A. This merchandise was received on April 3rd and sampled to the floor on April 13th with a $99.95 drop tag. The first sale at $99.95 was on April 16th.

Q. And was the ceiling price based on an OPA 7?—A. Yes; it was based on an OPA 7 compared with a similar sofa, 174–658½, which, I believe, is the one we referred to just a moment also—yes; 174–658½, which is two items above this.

Mr. AUSTIN. You say that $99.95 was a drop tag price?

The WITNESS. No; that wouldn't be.

Mr. AUSTIN. You said it was out on the floor with a drop tag.

The WITNESS. Yes; it was sent out at $99.95.

Mr. AUSTIN. And dropped to $66, is that it?

The WITNESS. Yes. The first sales were $99.95. The first five sales were, and it was not dropped to $66 until June, and then it went back to $99.95 after that.

917 Mr. AUSTIN. Well, then, when it first went out it did not go out with a drop tag.

The WITNESS. No; it wouldn't go out with a drop tag.

Mr. HORSKY. I think you made a misstatement. You said it went out with a drop tag.

The WITNESS. Oh, I am sorry.

Mr. AUSTIN. I see.

By Mr. HORSKY:

Q. The next item is the same sofa with a different color, I take it; is that correct?—A. Yes; a different color but covered by the same explanation.

Q. What did you find with respect to the next item, No. 174–4211?—A. This merchandise was received on April 3rd, was sampled on April 4th with a price tag of $49.95, although the original on the Confirmation is $39.95, so there seems to be some inconsistency in this schedule. The first sales were at $49.95.

Q. The original column should read "$39.95," according to Mr. Austin's explanation of it.—A. Yes.

Q. And it was compared—was there an OPA 7 on this
918 item?—A. Yes; it was compared with No. 174–680, which was received on March 26th and which was offered on March 28th at $49.95.

Q. What is the result of your investigation of the next item, Mr. Weitzberg, 174–4212?—A. 174–4212?

Q. Yes.—A. Well, first there should be a correction in this $36 item here, which seems to be the first sale, and the price on the Confirmation was $39.95.

Q. $39.95 instead of $36.—A. That is right.

Q. And was the ceiling price established—how was it established?—A. It was originally tagged at $49.95, and this mark-down was taken on April 16th to $36, and the price went back to $49.95. The ceiling was established by comparing with No. 174–680, which is the item referred to before.

Mr. AUSTIN. Now, do I understand that these items are out on the floor with a tag on them for a price in excess of the Confirmation price without a mark-up price having been run through against them?

919 The WITNESS. Yes. It does not happen in all the items.

Mr. AUSTIN. No; but it can be the case and that is the case here.

Q. In that case, where the goods are sold, a sold goods mark-up is taken?—A. That is right.

Q. What did you find with respect to the next item, Mr. Weitzberg, 174–4213?—A. This merchandise was received on March 26th. It was sampled on March 28th; tagged $99.95.

Q. Thank you. What did you find with respect to the next item—540–421?

The COURT. I think we will take a five-minute recess.

Mr. HORSKY. Thank you.

(A five-minute recess was had.)

OSCAR C. WEITZBERG, a witness having been previously duly sworn, resumed the stand and testified further as follows:

Redirect examination by Mr. HORSKY:

Q. I just asked you, I believe, Mr. Weitzberg, with
920 respect to the 540–421 sofa, is that correct?—A. 421 sofa.

Q. 421 sofa; that is correct.—A. The date of the merchandise received seems to be wrong. The date I have is May 23, 1942.

Q. Where did you find that; on the guide card?—A. On the guide card; yes.

Q. And how is the ceiling price established?—A. By comparison made on OPA 7 at $99.95.

Q. And the next item, 672–219, 280 and 281, a 3-piece suite.—A. I did not have the 280 and 281 guide card before. I have it now in this exhibit. This sold at $89.95 in March and was delivered in March.

I think those sales, 672–219, 280 and 281—this would answer Mr. Austin's question on the previous exhibit. As you recall, I did not have any sales check to show a $89.95 delivery.

Q. Do you have the sales check there?—A. Yes; I have the sales check.

Mr. HORSKY. I will offer that in evidence, Your Honor, as Defendant's Exhibit 65.

(The document was marked "Defendant's Exhibit 65" for identification and was received in evidence.)

921 Q. The ceiling price was established for the March delivery?—A. That is correct.

Q. The next item is 672–260, the platform rocker. What did you discover with respect to that item?—A. It was received in April, and an OPA 7 was made establishing the $22.95 ceiling.

Q. How about 672–270?—A. 270?

Q. That, Mr. Weitzberg, is the same as the second item on the exhibit; is that correct?—A. Yes; it is. That is why I have not got it.

Q. Thank you. The next one is 672–1081. What did you find with respect to the manner of establishing the ceiling price of that item?—A. This was received in April and compared with an item selling for $24.95.

Q. On an OPA 7?—A. Yes.

Mr. AUSTIN. Do you have that with you?

The WITNESS. No; I don't have those 7's with me.

Mr. AUSTIN. Do you know when the comparison was made?

The WITNESS. What is it?

922 Mr. AUSTIN. Do you know when the comparison was made—the OPA 7?

The WITNESS. I imagine it was some time——

Mr. AUSTIN. Just a minute—not what you imagine. Do you know or don't you?

The WITNESS. No; I don't know.

Mr. AUSTIN. All right.

The WITNESS. I might be able to tell from referring to this if you want to take the time out to see what date it was established.

Mr. AUSTIN. No; it is not necessary.

By Mr. HORSKY:

Q. What did you find on the next item, Mr. Weitzberg 95-56630?—A. This merchandise was originally received December 15, 1941.

Q. Instead of February 27, 1942?—A. Yes; and the original retail on the Confirmation was $149.95 and not $139.95.

Q. And how was the ceiling price determined?—A. It was offered during March at $149.95.

Q. Were there any deliveries in March?—A. No; there were no sales or deliveries in March.

Mr. AUSTIN. Do you have that Confirmation?

923 The WITNESS. I don't have the Confirmation. I have the guide card showing that.

Mr. HORSKY. Do you wish to see it, Mr. Austin?

Mr. AUSTIN. Well, this exhibit purports to show that this information came from the Confirmation. It is the question I was asked and which I answered, and Mr. Weitzberg now is testifying from secondary evidence to what appears on the Confirmation.

The WITNESS. You said that this purports to come from the Confirmation, but I have not heard anyone testify as to how the schedule is prepared. I mean, we have a Confirmation number here and there is a Confirmation number on the guide card——

Mr. AUSTIN. Yes; I understand those are supposed to tie up.

The WITNESS. Which is the Confirmation number shown here.

Mr. AUSTIN. I understand that—that that is not the Confirmation.

The WITNESS. No. That is a Confirmation number referred to on the schedule, though.

Mr. AUSTIN. Yes; I appreciate that.

By Mr. HORSKY:

Q. What did you find with respect to the next item, Mr. Weitzberg, 556–402?—A. This merchandise was received on June 20th. The Confirmation price was $89.95 and the first sale was at $89.95. The ceiling was established by comparing with No. 95–45860.

Mr. HORSKY. Thank you.

Mr. AUSTIN. Do you know when that was?

Mr. HORSKY. When the comparison was made.

The WITNESS. No; I don't know when the comparison was made.

By Mr. HORSKY:

Q. What did you find with respect to the next item, Mr. Weitzberg—358–3812?—A. Well, there are two entries there: 358–3812, first and second.

Q. Yes.—A. The merchandise was received on June 17th and sampled on June 20th and the first sale was $119.95. This was established by comparing with a similar 2-piece living room suit–220.

Mr. AUSTIN. Do you have the OPA 7 on that?

The WITNESS. Do I have it? No.

Mr. AUSTIN. Do you say they are available?

The WITNESS. Yes.

Mr. HORSKY. You have them here in the room, Mr.——

* * * * *

925 The WITNESS. I think I have them here. I have a lot of OPA 7's in this department.

Mr. AUSTIN. I wonder if you would get those, please?

The WITNESS. Surely. No. 09637 is the Confirmation number. It was made out on October 6th and filed October 10th.

Mr. AUSTIN. Now those are identical, aren't they?

The WITNESS. Which—these two?

Mr. AUSTIN. Except for that different color.

The WITNESS. Yes.

Mr. HORSKY. Is that all?

Mr. AUSTIN. Yes.

By Mr. HORSKY:

Q. What did you find with respect to the next item, Mr. Weitzberg, 358–4102? What did you find as to the manner in which the ceiling price was determined?—A. No. 4102?

Q. That is right.—A. This merchandise was received on August 28th; was sampled at $119.95 on September 12th. The ceiling price was compared—was established by comparing with 873-220.

926 Q. On an OPA 7?—A. Yes.

Q. What did you find with respect to the next item—510-1444—as to the manner in which the ceiling price was determined?—A. 510-1444?

Q. That is correct.—A. I don't seem to have any explanation on that. It is possible that my investigation was not complete at the time I was ready for the trial.

Q. You don't have any notes on that?—A. No; I don't have any notes.

Q. How about the next item, Mr. Weitzberg? That is one where the original price and subsequent sale and ceiling price are all the same except as to the one subsequent sale at a lower price, is that correct?—A. That is correct. No notes on that one, either.

Q. How about the next item, which is a similar circumstance?—A. Yes; it seems to be all the same range.

Q. The next item is the same number, is it not, with a different color?—A. Yes; 1697.

Q. What have you with respect to the next item, 1737?—A. I have not any notes on the next item.

927 Q. All right. How about the next item, 295?

Mr. AUSTIN. Now when you say you have no notes, do you know whether or not—you do not know whether an OPA 7 was made out?

The WITNESS. I have to assume that an OPA 7 was made because if you have it listed—the ceiling price, then it would lead me to assume that Mr. Crone had made out an OPA 7—had sent it to the Price Control Office where they listed it on the supplement and the supplement was then forwarded to the local office of the OPA.

Mr. AUSTIN. Well——

The WITNESS (interposing). You see, we either have the merchandise in March or in May, as Mr. Crone testified, and then it would be on the original ceiling price book, and anything after that would be on a supplement and any supplements would have to be made out from the OPA 7.

Mr. AUSTIN. But you do not know when that was made up if it was made up.

The WITNESS. As I said before, I have to assume it was made up. I don't know when it was made up.

Mr. AUSTIN. That is all.

By Mr. HORSKY:

Q. What have you with respect to the next item, Mr.
928 Weitzberg, which is 880—295, excuse me—A. 295. It is the next three items which are identical—873-295.

Q. Yes.—A. This merchandise was received in June and was sampled on June 27th. I think it is listed on page 3—13, line 11.

Mr. AUSTIN. Page 3 or page 13?

The WITNESS. Page 13.

Q. At what price?—A. At $159.95 and not at the price that the investigator showed on this exhibit.

Q. One of them is correct and two incorrect, is that correct? It is listed at both prices.—A. Yes, $159.95 is the correct price. Apparently they copied the next item on page 13, which is apparently the reason for the errors, and the ceiling price was established by comparing that with No. 873-292 at $159.95.

Q. What did you find with respect to 880, Mr. Weitzberg?—A. This merchandise originally came into the store on August 25, 1941, and we had five pieces in stock in April—in February, offered during March at $169.95. We had no sales in March and apparently no deliveries in March. The first sale at $169.95 was on April 2d.

929 Q. That applies to the third from the last and the next to the last item?—A. That is right.

Q. How about the last item, Mr. Weitzberg?—A. This merchandise was received on July 10th; was sampled on July 17th at $11.95 and the ceiling was established by comparing with No. 591-1208 at $11.95.

Q. Mr. Weitzberg, I hand you plaintiff's exhibit 17 entitled "Items sold above submitted price-list." The following information was copied from company's sold goods mark-up books. Have you made an investigation of that exhibit?—A. Yes.

Q. Could you state what you found with respect to the first item?—A. Well, these mark-ups are the result of selling merchandise above the booked price, as I explained before. If the Confirmation is $79.95 and the first sale is at $89.95, which is the tag price, we would have to record a sold goods mark-up so the sold goods mark-up is the result of a sale. The first item here, for example, No. 540-933, is one of the items referred to on Plaintiff's Exhibit 13, I believe.

Q. The large exhibit?—A. The large exhibit, yes, on line 17.

Q. These, in other words, are consequences of the manner in which the furniture department does business, is that
930 right?—A. That is right. In other words, the only way we can keep our books on account correct would be

to record these sold goods mark-ups. The next item on this exhibit line 2——

Mr. AUSTIN. Just a minute, please.

The WITNESS. Yes.

Mr. AUSTIN. Did you check, Mr. Weitzberg, to see whether or not the ceiling price of this was $59.95?

The WITNESS. I would have to check to see what I testified to on the other exhibit.

By Mr. HORSKY:

Q. Your testimony was the same with respect to 13, line 17?—A. That is correct.

Q. Will you explain, Mr. Weitzberg, so the Court will have it clear, who makes out these mark-ups?—A. These mark-ups are prepared by one of the sections in the warehouse where the guide cards are copied, and whenever a customer's copy of the sales check comes to her attention and when she pulls out the stock card so she can get the merchandise and have it available for the customer on the delivery date agreed upon, she notes the price indicated on the customer's copy of the
931 sales check. If it is above the Confirmation price or above the book price as indicated on the guide card, then she will make out a sold goods mark-up.—If the sale is not consummated and no delivery is made and a piece of merchandise comes back in stock, that would be cancelled.

Q. This is not the kind of a mark-up that requires the approval of you or any other person in the store normally, is that right?—A. Normally, that is right—it would not.

Re-cross-examination by Mr. AUSTIN:

Q. How about the notice dated April 30th to the effect that—Effective May 1 and until further notice all mark-ups must be approved by Mr. Brown and Mr. Weitzberg?—A. The purpose behind that was to take care of any contemplated mark-ups because in the sold goods mark-up the facts are all there. We have a price tag on the merchandise and we have a guide card price, if you will remember. We have to record that in order to keep our books in balance, whereas the other type of mark-up contemplated controlling any subsequent mark-ups.

Q. In other words you are trying to tell us that this notice which you sent out does not mean what it says.—A. No,
932 I wouldn't say it does not mean what it says because that notice was directed to the buyers and merchandise managers.

Q. Marking room, merchandise room and statistical.—A. But I don't think it says the furniture office, does it?

Q. It says all merchandise managers and buyers.—A. But the furniture office is not the warehouse.

Q. I understand, but do they make the mark-ups?—A. That is what I testified to just a minute ago.

Q. The buyer does not have anything to do with that?—A. No; because as far as he is concerned, that is a result. It is not a mark-up that he plans. This is a resultant mark-up after the merchandise has been sold.

Q. But the buyer knows what it is going to be sold for, doesn't he?—A. Yes, I imagine he would know.

Q. He doesn't decide what it is going to be sold for when he sees the customer come in, does he?—A. Oh, no.

Q. Now this first item, then, shows a sale at a price in excess of the ceiling price, does it not?—A. I will have to refer to that other exhibit. Yes, it was above the highest delivery in March.

Mr. AUSTIN. All right.

933 Redirect examination by Mr. HORSKY:

Q. Do you find any items on this exhibit, Mr. Weitzberg, that have not been duplicated on prior exhibits?—A. Did I understand you to say are not duplicated?

Q. Yes. Are there any new items on this exhibit?—A. I think the 540–939 is not.

Q. 540–939.—A. That is correct.

Q. What did you find with respect to these items?—A. Apparently two items with two different price ceilings—two items of that style number. There might have been some confusion about these items.

Q. Are they both listed, Mr. Weitzberg, do you know?—A. Yes; I believe they are both listed.

Q. Could you indicate where they are listed?—A. I think I better look for it in the new book. I have two ceiling prices here and I want to see what the ceiling price is in this book.

Q. I will withdraw the question, Mr Weitzberg. If we have not any information of where it is, I would rather not have you take the time to look for it. Could you indicate briefly on these items on this exhibit where they are indicated so we can cross-check them?

Mr. AUSTIN. Now if the Court please. I object to
934 that. The defendant is purporting to show that this exhibit is a pure duplication of another exhibit, and it is not. The purpose of this exhibit is to show the fact that these items on this list were sold in this department at prices in excess of the store's own established ceiling price. Now that may appear in other exhibits—that is, these items may appear, but they do not appear for that purpose. They appear for the pure purpose of showing violations of the legal maximum price.

Now we are not questioning that. We are not going into that in this exhibit, but with respect to these items, the store has told the public, this is the price. Thisi s our posted ceiling price. They have filed this price with the OPA and then the customer comes in, and what do they do but sell him the goods at a price in excess of that, and that is the purpose of this exhibit, and it is not a duplication.

Mr. HORSKY. Your Honor, the reason I asked Mr. Weitzberg that question is simply because an explanation as to each of these has been given in the case of the prior exhibit, and in this particular instance to which Mr. Austin refers to in the first exhibit, if he will refer back to his notes he will find that the ceiling price is not listed at that price but at $59.95—$69.95.

935 Mr. AUSTIN. I object to that, if the Court please. It appears on the exhibit with the same style number and exactly the same description at $59.95.

Mr. HORSKY. And it also appears at $69.95, as Mr. Weitzberg testified to.

Mr. AUSTIN. I do not deny that, but you cannot say it does not appear.

Mr. HORSKY. But there are two figures.

Mr. AUSTIN. I am not trying to prove your case.

Mr. HORSKY. I want to show that, Your Honor.

The COURT. I think your examination should show the relation to the purpose which Mr. Austin announces in this exhibit. Limit it to that.

Mr. HORSKY. All right.

By Mr. HORSKY:

Q. Will you take the second item, Mr. Weitzberg, and indicate what you discover with respect to the variation between the actual selling price as indicated on this exhibit and the ceiling price.—A. This was the item I testified to on exhibit 13.

Q. Which line, Mr. Weitzberg?—A. Liiie 3, and it is in the ceiling price book at $39.95.

936 Q. Could you indicate where in the ceiling price book it appears at $39.95?—A. On page 6, line 30.

Q. Therefore this is not a sale above the listed ceiling price, is that correct?—A. No.

Q. All right. The next item, Mr. Weitzberg, is the same style number, I take it, is that correct?—A. That is correct.

Q. And the same ceiling price at $39.95 appears rather than $29.95 as it appears on this exhibit, is that correct?—A. That is correct.

Q. At the same place. What do you have with respect to the next item?—A. That was the one I couldn't find before.

Q. You do not have that item.—A. I cannot find it readily. Apparently it is in the ceiling price book. I will have to check that.

Mr. AUSTIN. Now let me ask you——

Mr. HORSKY (interposing). He was just going to answer that question.

Mr. AUSTIN. Oh, I beg your pardon.

A. It is on page 14, line 7. There is a figure of $39.95 and I have a $49.95. Someone had written this in ink. I will see if I can find it.

937 Q. That appears on my photostat at $49.95 too, Mr. Weitzberg.—A. Okay.

Q. So that this is a sale above the listed ceiling price; is that correct?—A. That is correct.

Q. Do you have any information with respect to the next item?—A. I don't seem to have any information with respect to the next item.

Q. How about the 171-6300, sofa, the next item?

Mr. AUSTIN. Does he have a question before him?

Mr. HORSKY. Yes.

Mr. AUSTIN. I will withdraw the question. Go ahead.

Q. What do you find with respect to the sofa?—A. What number is that?

Q. 171-6300.—A. Apparently that is the way it is listed.

Q. I beg your pardon?—A. I say, apparently that is the way it is listed. That would be above the listed ceiling.

Mr. HORSKY. Thank you. Mr. Austin has a question.

Re-cross-examination by Mr. AUSTIN:

938 Q. Will you look at page 6?—A. Yes.

Q. That item, the last one on page 6 of your list. That is the ceiling price-list for department 59, Mr. Weitzberg.—A. Yes.

Q. It shows that there have been two figures typed in there, have there not?—A. That is correct.

Q. And one superimposes the other.—A. That is correct.

Q. And you are assuming that that is $39.95, are you not?—A. That is right. Isn't that the way it appears on the photostat?

Q. No, it does not.—A. That is a blurred figure "2," isn't it?

Q. It looks like a "2" to me.—A. Do you have the carbon copy?

Mr. AUSTIN. If the Court please, the photostat, which is the Plaintiff's Exhibit, is a photostat of the cost-of-living statement as is on file with the OPA and that, of course, would be deter-

minative in this point so far as the cost-of-living statement is concerned. As far as the base period statement is con-
939 cerned, Mr. Weitzberg's list would be the final determinative factor, I believe.

The WITNESS. Well, the figure is blurred, Your Honor. It apparently was typed with the 3 over the 2 and the photostat does not show that clearly.

The COURT. Have you a reading glass around here?

The WITNESS. I think the only way to really determine that would be to have the carbon copy which is at the OPA office.

Q. Do you have the OPA form with you?—A. I think I have.

The COURT. I will have a glass here and we will see if we can make anything of it. Anything else on this item? Are you through with that item?

Mr. HORSKY. He was looking, Your Honor, to see if he can find that original document from which this was compiled to see if the typist had made a mistake at that time, and if so, which is the proper figure.

The WITNESS. It seems she made a mistake and then caught her error and then retyped.

Mr. AUSTIN. The question is: what is it actually listed as? Is it listed in the OPA form at $29.95 or $39.95?

940 Mr. HORSKY. Your Honor, I think that this item is not worth taking the time of the Court. I will withdraw the question.

The COURT. And that will be all for now.

(Recess for lunch.)

941 AFTERNOON SESSION

(The hearing was resumed at 1:30 o'clock p. m.)

Whereupon OSCAR C. WEITZBERG, the witness on the stand at the time of taking the noon recess, resumed the stand and testified further as follows:

Direct examination by Mr. HORSKY:

Q. Referring to Plaintiff's Exhibit 17, I would like to have you indicate only whether the exhibit is correct in portraying as to each item whether there was a sale above the ceiling price. I think you had gotten down to the fifth column; a chair, 432-213, which states there was a sale at $33.95 and the ceiling price listed $30.95; is that correct?—A. May I refer to my notes? (Referring to same.) I do not seem to have any information on 432-213.

Q. All right. You have something on the next one, 171-6300.—A. I believe that was listed at $109.95.

Q. Will you see if you can find it?—A. No; it was listed at $104.95.

Q. And you have nothing to indicate there was not a sale at $109.00?—A. That is correct.

942 Q. How about the next item which indicates a sale at $6.99 and ceiling price at $5.95? Have you any information with respect to that item?—A. Yes; I have a guide card here.

Q. What does that indicate?—A. It indicates that on July 30th, there was an exchange which was recorded here at $6.99; customer's name McGovern and the sale to McGovern, was originally at $5.99, so apparently the girl who had made out the exchange order had put down the incorrect price.

Q. $5.99 or $5.95?—A. $5.95.

Q. The $6.99 figure appears opposite the exchange order?—A. Yes; it is marked "Exchange" on the guide card.

Q. Will you show the Court where it appears on the guide card?—A. (Stepping up to the Judge and indicating.) July 30th, McGovern, Exchange $6.99. There was no sale at $5.95 and when the girl got the exchange order, she made it up; the other piece came back—if it came back. In other words, two things that might happen to a piece of merchandise

943 picked up from a customer; one, it may be returned to stock, in which event it would be recorded on the card or it would be sent to our damaged merchandise, in which event it would not be posted back as credit. In this case, it seems as though it was not posted back as a credit.

Cross-examination by Mr. AUSTIN:

Q. I do not understand it. You have testified that the sold goods mark-up is a mark-up which runs through after the merchandise is sold?—A. Sold or after the piece is recorded on the guide card. In this case, it was an exchange order. It was marked August 4th.

Q. Do you have anything to indicate that this information which appears was taken from the sold goods mark-up book of this Department is not a correct representation of what appears in the mark-up sale goods book?—A. No; what is recorded here is not correct. The only thing I have that the sold goods mark-up would have referred to would be the sale $6.99, for the only sale on the guide card is McGovern transaction at $6.99, and obviously this must be the thing that this sold goods mark-up referred to. Sold goods mark-up

944 would not stand by itself. It would have to refer back to some other transaction.

Q. May I see the guide card?—A. Yes (handing same to Mr. Austin). July 30th, McGovern, Exchange $6.99. All those sales are $5.95. This is the only entry at $6.99. Here (indicating) is the McGovern sale. It was originally sold to McGovern, on April 17th at $5.95.

Q. Then this is an error?—A. This is an error on the part of the girl who originally made out the exchange order, but it is not an error on the part of the girl who made——

Q. That girl is employed by Hecht and not by the Q. P. A.?—A. Yes; that is correct.

Direct examination by Mr. HORSKY:

Q. The next item is 19-220, with a sale at $79.25.

Mr. AUSTIN. 95 cents.

945 Q. $79.95, and the ceiling price listed at $69.95; is that correct?—A. The ceiling price I have here is $79.95.

Q. I refer you to page 4, line 16; see if that is the item.—A. Page 4, line 16 [looking for same] Yes; that is the item.

Q. And it is listed at——A. (Interrupting.) At $79.95. [Steps up and indicates same to Judge.]

Q. The next item is a desk chair which is number 382-3602, a sale at $15.00 and ceiling price listed as $13.95. Do you have that information with respect to that item?—A. Yes. I just found something. It is listed at $13.95 on page 3, the twenty-first item. The notation I have is a correct ceiling price of $15.00.

Q. Do you have the information upon which you base that?—A. I don't have it here. It might be in one of my other notes because some of these items might be on the very first schedule.

Q. Would you refer to line 28 of the large exhibit?—A. [Looking through record.]

946 Q. I think I will withdraw that question. Don't bother. The next item is a three piece Davenport suite, with a sale at $99.95; ceiling price at $89.95.—A. The correct ceiling is $89.95.

The COURT. What is that?

The WITNESS. The correct ceiling is $89.95.

Q. And how about the last item?—A. That is the same chair as is listed on line 2, and line 3 of this exhibit.

Q. It is identical all the way across?—A. That is right.

Q. And that is the item as to which there is doubt as to whether it is 29 or 39 on the exhibit?—A. That is right.

Q. I hand you, Mr. Weitzberg, Plaintiff's Exhibit 16, and ask you if you have investigated that exhibit?—A. This is the exhibit that is entitled "Items not sold in March".

Q. But sold at a higher price after May 18th and on submitted ceiling price?—A. I have that.

Q. Will you indicate in your answer whether the information which this exhibit purports to show—that is, the items,
947 were sold higher than the price at which listed, is correct as to each item? The first item, for instance, is listed at ceiling price $11.95, and subsequent sale $13.95; is that correct?—A. I believe that is one of the items that appeared on the schedule 13; the ceiling on that was $13.95. That was the highest delivery.

Q. But was the item listed? I refer to page 9, the fourth item from the bottom, and ask you if that is the listing of this item?—A. That is correct; $13.95.

Q. It is listed at not $11.95, but $13.95?—A. That is correct.

Q. The sales therefore were not above the listed price?—A. That is correct.

Q. That is equally true of the second item on that exhibit, which is the same style number but of a different color?—A. That is right. This is the item [indicating to the Judge].

Q. What do you find with respect to the next item; 804-2515, a chair?—A. This is an item that appears on the
948 large schedule Exhibit Number 13; it is item number 34.

Q. It is indicated on that schedule, I believe, as not being listed; is that correct?—A. That is correct.

Q. And you testified it was not listed?—A. I think that was one of the items we couldn't find.

Q. As being unlisted?—A. That is right.

Q. So the $34.95 in the last column on this exhibit, so far as you can determine, does not appear on the ceiling price list?—A. That is correct.

Q. With respect to the next item, what did you discover, 804-242?—A. This chair, in a different color, was listed in the ceiling price book, $19.95.

Q. For the sales of the above listed item?—A. That is correct.

Q. How about the next item?—A. 194134?

Q. That is correct.—A. I think this is the third time
949 this item has appeared; it is shown in the schedule on page 4, line 5, as $119.95.

Q. Page 4, line 5; and therefore the exhibit in the last item should be $119.95?—A. That is correct; that was the highest delivery in March.

Q. The sale was not above the listed price?—A. That is correct.

Q. What did you find with respect to the next item; 219, 280.

281 suite?—A. This is a repetition of one of the items on another schedule and was listed on page 1, line 1, $89.95.

Q. And the sale at $99.95 would be above the listed price?—A. That is correct.

Q. How about the next item?—A. This was listed at $59.95, page 1, line 4.

Q. And the second, at $64.00, would be above that price?—A. That is right.

Q. The next item, 672–219–1255 and 270?—A. This is a repetition again. These are duplicates of the same item
950 that appeared in the other schedules and the correct ceiling was $89.95, page 13, line 7, for both items.

Q. And the sale at $99.95 was above the listed price?—A. That is right.

Q. That item is duplicated immediately beneath the one you just referred to?—A. That is right.

Q. The last item on that page is a duplication of the first item?—A. That is correct.

Q. And the last figure should be $13.95, rather than $11.95?—A. That is correct.

Q. And that was not a sale above the listed price?—A. That is correct.

Q. I hand you Plaintiff's Exhibit 18, which is entitled "Mark-up Sold Goods", and ask you if you would explain to the Court again, so it would be perfectly clear on the record, how these sold goods mark-ups operate, and what this exhibit indicates with respect to the transaction that actually happened
951 in the store.—A. This exhibit listing of the sold goods mark-ups is a duplication of some of the items that have appeared on the other lists. I think I tried to explain that on one of the earlier schedules.

Q. will you explain it again?—A. Yes; in the retail method of inventory, every time a piece of merchandise is brought into the store, the confirmation price becomes the price at which we enter it on our books of account. It need not be, of course, the selling price, because, as I explained before, if it comes in before a sale, we have one way of treating it, and if it comes in during a sale, there is another way of treating it, but if there is any difference between the selling price and the retail price on our books—let us call it the confirmation price for simplicity—then we have to record this sold goods mark-up, so that our books of account will be in agreement at all times, and these sold goods mark-ups are the results of these transactions.

Q. This indicates, I take it, that there has been a sale at a different price than what you call the confirmation price?—A. That is correct.

952 Q. And a sale greater than the conformation price?—A. That is correct.

Q. And this is recorded after the sale, so your books will be in balance?—A. That is correct.

Q. Do you have any indication of how many duplications there are in this exhibit?—A. On this exhibit, there are eight duplications; there were six items which appear on Exhibit 9—my Exhibit 9. I think it is Plaintiff's Exhibit 13.

Q. Yes; may I ask you, Mr. Weitzberg, this mark-up would be taken on each item as it is sold?—A. That is correct.

Q. Therefore, if there was a sale of three items that same day, there would be three sold goods mark-ups?—A. That is correct.

Q. So that anyone checking the mark-up book would be apt to find a number of certain items appearing in that mark-up book?—A. That is correct.

Mr. HORSKY. Your honor, I have no further questions of this witness with respect to these exhibits. I have some

953 other questions, but I think I ought to offer the Government's counsel an opportunity to finish their examination of the witness with respect to these exhibits, at this time, if they wish to.

Mr. AUSTIN. I have nothing.

Q. Do you have any figures with respect to the volume of sales for any period in the furniture department; gross sales, in these four furniture departments, 60, 59, 69 and 76?—A. I have the information on the net sales; not the gross sales.

Q. Would you explain what the difference is?—A. Yes; the net sales are the net proceeds resulting from all sales after deducting any returns or allowances.

Q. That is what I wanted to get.—A. The net sales.

Q. Could you tell us the figure for each of these departments and indicate the period?—A. Yes. I have taken the net sales for the period beginning May 18th which was the date that the General Maximum Price Regulation went into effect and ended with the period of October 10th. I picked that date because that was the date that seemed to appear on a number of the Government's schedules and exhibits.

954 The sales for Department 59 were $232,891.54.

Q. Yes.—A. Department 69, for the same period were $220,644.91.

Q. Yes.—A. 76 Department, for the same period, $102,907.12.

Q. Department 60?—A. $343,568.37.

Q. Do you have the number of transactions in each department for that period?—A. I do.

Q. Would you indicate what those are?—A. Department 59, for the same period was 6,102 transactions; 69, was 5,215 transactions.

Q. I didn't get that figure.—A. 5,215. 76 was 6,633.

Q. And 60?—A. 8,775.

Q. Do you know, Mr. Weitzberg, the number of separate items that there are in the Hecht, as a whole?—A. Yes.

Q. Approximately. How did you determine the figure?—A. I determined it by taking the last inventory on the
955 completed store inventory which we had which was prior to the investigation, and that was January 30, 1942, and I had all our inventory cards totaled, showing separate items that appeared in the inventory, and they were in excess of one million two hundred thousand separate pieces of merchandise.

Q. Would you estimate that that is a figure which would be changeable up and down during the year?—A. I would say that would be a normal low figure; about the lowest figure in our inventory volume.

Q. Immediately following the Christmas sale?—A. That is correct; it is normal—it is the normal low period of inventory and that is one of the reasons we take the inventory at that time of the year.

Q. Have you any figure with respect to the total amount of the overcharges resulting from the errors made by the buyers in Departments 26, 47 and 55?—A. Yes.

Q. Would you indicate what those figures were?—A. What do you mean?

Q. The errors with respect to ceiling prices established by price regulations has been testified to in this hearing
956 to be——A. (interrupting.) In Department 26, one hundred and four.

Mr. AUSTIN. Will the Reporter repeat the question? [Question repeated by the reporter.]

Q. Department 26, one hundred and four. Would you state how this figure was arrived at, so far as you know? What does this $104.00 represent?—A. It would represent the overcharges as was developed during the trial.

Q. Did you make this calculation?—A. No; I did not.

Q. You had it made?—A. That is correct.

Q. Can you state how it was done, as far as you know?—A. From the testimony that developed at the trial between the

ceiling price which was the offering price in March and the mark-up price based on the mark-up taken.

Q. And the number of items sold at that price?—A. That is correct.

Q. What was the figure for Department 47?—A. $1,166.00.

Q. And for Department 55?—A. I don't think there was any alleged for Department 55.

957 Mr. AUSTIN. I think you are right. You are right.

Q. Do you have the total? Do you have the total volume of net sales, I should say, for these three departments for this period from May 18th to October 10th?—A. Yes; I have.

Q. Would you give them to the Court?—A. The sales for Department 26 for the period May 18th to October 10th was $91,441.99.

Q. For Department 47?—A. $144,845.80.

Q. And for Department 55?—A. $222,002.17.

Q. You were present in Court when Mr. Levy testified with respect to incentive compensation of buyers?—A. No; I was not in Court.

Q. Would you explain briefly the manner in which the buyers' incentive compensation works with respect to the price and the volume?—A. Our buyers' plan of incentive—compensation through incentive—is one of the several plans in the store. We have one for buyers and one for salespeople

958 and one for our drivers. Each one depends on the nature of the work done.

Q. I am speaking only of buyers.—A. Yes; I wanted to explain it.

Q. Yes.—A. Buyers—a buyer's compensation is based primarily upon the volume and is a safety factor.

Q. You mean his incentive compensation?—A. The volume of sales. That is correct. He is paid a regular salary and in addition an incentive compensation based upon the increase of his volume over a base period.

Q. Does the amount of mark-up of the margin of profit enter into it at all?—A. Yes; to a certain extent it does; it is a safety factor, because if the buyer's incentive for additional compensation is only based upon volume, he could sell his merchandise as low as he could in order to get the maximum amount of volume possible; so as a safety factor, it is stipulated in his contract that the gross margin percentage shall not be less than a certain amount.

Q. And there is an upward limit?—A. Yes; there is an upward limit, because, after all, not only has management in-

terests in the volume of business, but the buyer as well.
959 We all know it is elementary, if the price is too high, the volume of business will fall off, and that is the reason for having a low and a top to a gross margin percentage, because if we don't have it on one hand, there wouldn't be any profit, and if we permitted it to go too high, it would affect our volume of business.

Mr. HORSKY. That is all.

Cross-examination by Mr. AUSTIN:

Q. You have explained that, but you have not told us what the real basis of the incentive compensation is and how the store figures it?—A. Generally the base—we will have to start off with the base volume. I am taking the general thing. It generally applies in our departments. The base volume which is the basis for determining additional compensation is generally the volume that the buyer takes over a period. Let us assume buyer X is employed and at the time the volume is given as one hundred thousand dollars. His contract would, therefore, be based upon percentage of sales in excess of one hundred thousand dollars. That is the incentive for getting additional volume. If he doesn't make one hundred
960 thousand dollars in volume, he gets no additional compensation. The safety factor I mentioned before—the gross margin percentage is determined by the typical figure for that department, based on the average gross margin percentage in stores throughout the country. We get our information from two sources; one from the Harvard School of Business Administration and the other source is the compilation made by the National Retail Dry Goods Association.

Q. Now, you described that as a safety factor, but aren't those two factors of similar consequence and importance?—A. No; I don't think so.

Q. Let me ask you this.

Mr. HORSKY. Would you want to explain your answer?

The WITNESS. Yes; I would like to. I think we all appreciate the fact that if the prices are too high, the volume goes off. In other words, when a buyer buys merchandise, he has to determine the price at which it is going to sell. One of the ways to determine it is by checking with competition. He can't state an arbitrary price out of the air. It has got to be
961 consistent with the value of the product and the price similar to that selling in the locality stores.

Q. I understand that. You are emphasizing that; but isn't it also a fact that regardless of how much this buyer sold—he sold ten times the amount of his base for the amount of the

volume that was present to him when be became buyer and don't make any profit or loss money for the store, that certainly would be a factor to take into consideration.—A. Well, you use the word "lost money for the store." He isn't interested in losing money for the store. All he is asked to do is to make sure that the gross profit on the merchandise he is responsible for does not fall below a certain percentage. In other words, let us assume that in a given department the gross percentage is to be thirty-three and one-third percent. The buyer is not responsible for the expenses in that department. The expenses in that department could be forty percent and might actually show a net loss to the company. All the buyer is responsible for is to see that he does not sell his goods below the average gross margin percentage, and the gross mar-
962 gin percentage is not just an arbitrary percentage without regard to other percentages.

Q. It wouldn't reflect against the buyer, would it, if he showed a record of consistently high mark-up and consistently high volume?—A. No, except that there is a provision that he gets no additional compensation if he goes above a certain percentage. In other words, there is that top limit I spoke about before. In other words, as I understand the arrangement, it is a reasonable arrangement within certain limits. There is a top limit and a low limit.

Mr. AUSTIN (looking through records). I a msorry, if the Court pleases. The record is not indexed, and I can't find what I am looking for. I believe that is all.

(Witness excused.)

Mr. HORSKY. I will call Miss Gilbert.

Whereupon CELIA GILBERT, a witness called by and on behalf of the defense, having been first duly sworn, was examined and testified as follows:

963 Direct examination by Mr. HORSKY:

Q. You are employed by the Hecht Company?—A. Yes, sir.

Q. In what capacity?—A. Buyer.

Q. In what department?—A. Coats and suits; in the better department.

Q. Women's coats?—A. Yes.

Q. What floor is that on?—A. Third floor.

Q. I show you a picture or drawing and ask you if that is approximately the way the Women's Coat Department on the third floor, in which you are the buyer, looks? Is that right?—A. Yes.

Q. You may mark these.

Mr. HORSKY. Mr. Austin, if you would come up with me, I think we can do this much more satisfactorily; if you don't mind.

(Mr. Austin steps up.)

964 Q. I marked these items on this exhibit, Miss Gilbert, and what do these represent?—A. Those are the mirrors in my department, with the posts.

The COURT. I do not hear you.

The WITNESS. They are the mirrors on the posts of the figures; wooden fixtures on the mirrors.

Q. What do these marks around the margin represent?—A. Those are my cases where my merchandise is hanging.

Q. Would you indicate to the Court with this pencil approximately where you have had signs posted on or about the last part of September?—A. From the very first day that we were told to put them on, they were on each pillar of the mirror facing the stock—facing the hanging cases—facing the cases, and there is a square sign.

Q. As big as this exhibit?—A. Yes; with large figures stating the item on there and various prices that were on the floor opposite the cases.

Q. On each of these posts?—A. Yes; right about here [indicating on drawing].

965 Q. Would you put an "X."—A. (Puts an "X" thereon.)

Q. 4X's?—A. Yes; on each one of them.

Q. On each post there would be four?—A. Yes.

Q. Were there any signs along the walls?—A. On the flat wall next to the suit department.

Q. Would you indicate where that is on this exhibit?—A. About here [indicating]. There is one here, and there was one here.

Q. On the wall?—A. Yes; [indicating with an "X."]

Q. Do you recall the time when Mr. Fath came to your department?—A. Yes.

Q. Were those on the post at that time?—A. Yes.

Mr. HORSKY. I would like to offer these as Defendant's Exhibit 66.

(The document above referred to was received in evidence and marked "Defendant's Exhibit Number 66.")

966 Mr. AUSTIN. We object, if the Court pleases, for the reason that the drawing is not scaled. It does not show any distances, other than an indication that the witness has made, where it could be made at.

The COURT. I will let it stand.

(Witness excused.)

Whereupon FANNIE ZIMMERMAN, a witness called by and on behalf of the defense, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Are you employed by the Hecht Company?—A. Buyer for the main floor of sweaters, skirts, blouses, scarfs, and handkerchiefs.

Q. How long have you been employed by the Hecht Company?—A. Since 1940, September.

Q. Would you explain to the Court how ceiling prices are displayed, if they are displayed, on the sweaters on your main floor?—A. The sweater has a ceiling price stamp on each
967 ticket.

Q. Has that been true from the beginning?—A. Yes; we were given stamps and put that on.

Q. You mean the little price tag on each individual slip?—A. Yes.

Q. Are there signs posted?—A. Yes; they were originally on the glass cases facing the customers; rather good-sized signs, plainly written.

Mr. HORSKY. That is all I have of this witness.

Mr. AUSTIN. No cross-examination.

(Witness excused.)

Whereupon BUELAH THOMAS, a witness called by and on behalf of the defense, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Are you employed by the Hecht Company?—A. Yes.

968 Q. What is your position?—A. Buyer of corsets and brassieres.

Q. How long have you been employed by the Hecht Company in that position?—A. 13 years.

Q. What floor is your department on?—A. Third floor.

Q. I show you a plaque and ask you if that represents the general lay-out of the department where you sell this merchandise?—A. Yes.

Q. Do you sell corsets and brassieres in each of these points on this picture?—A. Yes.

Q. I will mark this little square "A" and "B" and ask you if those are selling counters or posts?—A. Those are posts.

Q. Would you indicate with this pencil, as nearly as you can, the places where the signs were posted in your department?—A. As you enter the department here, one side is brassieres, where we sell through the counter, and the other side is

corsets and girdles, as we call them. Over right above
969 this post here is a sign, a little larger than this as you go in, for the corsets and brassieres, and we sell right there on the counter; right here [indicating on drawing].

Q. At this point here?—A. Yes.

Q. Where I marked an "X"?—A. Yes. We carry all the prices of the girdles and corsets.

Q. They are sold here?—A. On this section; and on the other side are brassieres, and a sign is posted over there, just the same, with all prices of every brassiere we carry in stock and is sold here [indicating].

Q. Where I marked a "Y"?—A. Yes.

Q. Are these displays?—A. Yes.

Q. What is sold there?—A. At intervals it just displays; there is nothing really sold from the displays; some just have displays.

Q. All the same items; girdles and brassieres?—A. That is right.

970 Q. Do you recall the occasion upon which Mr. Fath visited your department?—A. I do not.

Q. How long have these signs that you have testified to been there?—A. Since we were first told to put them up; they have been up at all times, to my knowledge.

Q. It is a sign about the size of this exhibit?—A. This is long and a little bit wider. It has to be that way to carry the numbers and prices. They are in good-sized letters.

Mr. HORSKY. That is all. I offer in evidence this exhibit as Number 67.

(The document above referred to was received in evidence and marked "Defendant's Exhibit 67.")

Mr. AUSTIN. No cross-examination.

(Witness excused.)

971 Whereupon HAROLD LEVI, a witness called by and on behalf of the defense, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Are you employed by the Hecht Company?—A. Yes.

Q. How long have you been employed there?—A. Continuously for the past seven years.

Q. What is your capacity there?—A. Buyer, basement men's furnishings.

Q. How long have you held that position?—A. For about three years.

Q. You sell sweaters in that basement department you referred to?—A. Yes.

Q. Men's sweaters?—A. Yes.

Q. Will you tell the Court how the ceiling prices are displayed with respect to those sweaters?—A. At the time that the OPA first went into effect, we were supplied with
972 rubber stamps and pads. Some commodities which were not asterisk items could be stamped. Other items had to be posted with large signs giving lot numbers. Sweaters were stamped.

Q. And they were at selling price?—A. Yes.

Q. Each sweater?—A. Yes.

Q. That has been a practice from the beginning of the General Maximum Price Regulations?—A. That was a practice from the beginning of the General Maximum Price Regulations. Now we do it automatically in the warehouse.

Q. The stamp still carries the item?—A. Yes.

Q. The ceiling price?—A. Yes.

Mr. HORSKY. That is all.

Mr. AUSTIN. No cross-examination.

(Witness excused.)

973 MAXINE SCHWARTZ, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your full name for the reporter?—A. Maxine Schwartz.

Q. Are you employed by the Hecht Company?—A. Yes; I am.

Q. What is your position there?—A. Assistant buyer in the underwear department.

Q. How long?—A. Eleven years.

Q. Hecht Company?—A. Yes.

Q. Do you recall the occasion upon which Mr. Fath visited your department?—A. I do.

Q. I hand you, Miss Schwartz, a plaque and ask you if that ... ents the general nature of the department in which you are the assistant buyer? Is that correct?—A. Yes.

Q. Would you indicate to the Court what these
974 various places represent? Are these showcases that I mark "A, B, C, and D"?—A. Yes.

Q. And these horseshoe-shaped arrangements are also showcases?—A. Yes. That is right.

Q. And you sell lingerie on each of the places that are marked here [indicating]?—A. That is correct.

Q. Would you indicate to the Court where ceiling prices were

posted on the occasion?—A. We had ceiling signs posted on all the glass cases.

Q. Would you indicate, as near as you can, on this exhibit?—A. They were here and on the middle [indicating].

Q. Would you mark them with a large "X"?—A. And we have them in the middle and on either side [indicating].

Q. So we will be clear, this is a showcase about this high [indicating]?—A. This would be the showcase on this side of the department [indicating].

975 Q. Yes. Where would the signs be? On the showcases, on the walls, or behind the showcases?—A. We had it on the wall on this side [indicating]. We had it on this wall [indicating]. There is a wood panel, and we had one there [indicating]. There is another wood panel in the center and then on the other side [indicating].

Q. And the signs were on the wooden panel?—A. Yes; we had two gown signs and——

Q. Were there other signs in the department?—A. On the slip section right here [indicating].

Q. I will make that "E"; that is the slip section you say. Is this a counter here [indicating]?—A. Yes; and we had them right here, a sign; we had one here and one there [indicating].

Q. Would you mark "X's" where you had them. What were sold in these hor'shoe places?—The slips section; slips.

Q. And those were the signs on the horseshoes themselves, or were these the signs [indicating]?—A. These were the signs for the back case, and these were the center ones, and we had one about here and the same place on the other side [indicating].

976 Q. Those were on the counter?—A. No; they were on the glass cases.

Q. Standing on the cases?—A. They were put on with scotch tape—these large ceiling signs.

Q. Is this a waist-high case?—A. No; it is a case like that [indicating].

Q. I see.—A. And they were put on with scotch tape.

Q. What do these squares on the right-hand side—are they tables?—A. Tables.

Q. Are those part of your department?—A. Yes; we have tables on that side [indicating].

Q. What were sold on those tables [indicating]?—A. We change the merchandise there all the time, and we have signs on the table with ceiling toppers.

Q. You have a sign standing on the table?—A. Yes; and we have a ceiling price on ceiling toppers giving the ceiling price.

Q. What are these four tables that I have indicated "A, B, C, and D" used for?—A. I think they would be tables in front of the department facing the elevators.

977 Q. Those are part of your department?—A. That is right, and we change the merchandise on the tables.

Q. Does it have signs with ceiling tops?—A. That is right.

Mr. HORSKY. I will offer that in evidence as Defendant's Exhibit 68.

(The document was marked "Defendant's Exhibit 68" and received in evidence.)

Mr. AUSTIN. Same objection. No cross-examination.

Mr. HORSKY. That is all. [Witness excused.]

Mr. HORSKY. I will call Miss Shinn.

METTA SHINN, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your full name for the reporter?—A. Metta Shinn.

Q. You are employed by the Hecht Company?—A. Yes, sir.

978 Q. And how long have you been employed by the Hecht Company?—A. Sixteen years.

Q. Sixteen years?—A. Yes.

Q. What is your position there?—A. I am head of stock.

Q. In what department?—A. In the Knit Underwear Department, main floor.

Q. How long have you occupied that position?—A. About three years, I believe.

Q. Miss Shinn, I show you a pencil sketch of the Knit Underwear and Handkerchief Department on the main floor; is that approximately what it looks like?—A. That is what it looks like.

Q. Would you indicate what these various items are, these squares in the middle [indicating]?—A. Tables.

Q. And these [indicating]?—A. That is the Handkerchief Department. This is mine, here [indicating].

Q. You are in the Knit Underwear Department?—A. That is right.

979 Q. I only want to talk about the underwear department. These tables are used for selling underwear?—A. That is right.

Q. Do you recall a visit from Mr. Fath to this department?—A. No.

Q. Can you indicate to the Court where, with this pencil, the ceiling price signs have been posted or were posted toward the end of September, as near as you can remember from your own knowledge?—A. They were posted——

Q. Use the pencil and indicate on the exhibit where they were.—A. This is a pillar there, here [indicating].

Q. Would you mark—— A. For every item we had them in large, about the size of maybe this, maybe a little wider, each one of these posts on each side——

Q. You mean you had a sign on this post?—A. That is right. One in the front and one up here [indicating].

Q. One on the end, too?—A. It depended on the item that was under this—say slips or gowns or petticoats—and the same on this one [indicating].

980 Q. On two sides?—A. Two sides there.

Q. Where I am marking the arrows?—A. That is right.

Q. And three sides of this one at the end [indicating]?—A. The way this would be; it would be turned around. It is just the same. This is the one, I believe.

Q. Now, are knit underwear sold at all of the places?—A. Knit underwear? Yes, sir; everything in there is knit underwear.

Q. What are sold on the tables?—A. Tables is the same thing—rayon and knit gowns and slips, and things of that kind.

Q. Were there any signs on the tables, themselves?—A. Everyone of them have a sign with a topper.

Q. A ceiling price on the top?—A. Yes, sir.

Q. And this department is the handkerchief?—A. That is right.

Mr. Horsky. I will offer this in evidence as Defendant's Exhibit 69.

Mr. Austin. The same objection, if the Court please.

981 The Court. Yes.

(The document was marked "Defendant's Exhibit 69" and received in evidence.)

Mr. Austin. No cross examination. [Witness excused.]

Mr. Horsky. I will call Mr. Solomon.

Walter Solomon, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Horsky:

Q. Would you state your name for the reporter?—A. Walter Solomon.

Q. Are you employed by the Heeht Company?—A. Yes, sir.

Q. And what is your position?—A. Assistant buyer in the Men's Furnishings.

Q. On what floor of the store?—A. On the first floor.

Q. How long have you occupied that position, Mr. Solomon?—A. I have occupied that position for about eight years, but I have been with the store seventeen years.

982 Q. I see. I show you, Mr. Solomon, a plaque which is rather formidable, but I ask you if you can indicate—I mean if that looks in general like the outline of your department, the show cases and the tables and the like—A. Yes.

Q. I will take it up in more detail as we go along. Would you indicate for the Court on this department where men's white shirts were sold?—A. Right here [indicating.]

Q. How many of these black squares would it include [indicating]?—A. This is all white shirts [indicating].

Q. All the way over to the door?—A. Right to the Seventh Street door.

Q. Are some of those fancy shirts?—A. All plain white.

Q. That is the part I am marking with an A—a line and indicating it as A. Now, would you indicate to the Court where the ceiling price signs for those shirts were posted?—A. Right here [indicating].

Q. I put an X where you point. What was that, a post or a door?—A. No; it was on a mirror.

983 Q. Would you explain that to the Court?—A. It is a plate glass mirror about eight feet long and four feet wide, and the sign was 12 by 14 or 12 by 15, and an inch or two in, also.

Q. About a little smaller than that, perhaps [indicating]?—A. About this big from here down [indicating].

Q. Yes; and that sign indicated the ceiling prices for the shirts sold in that particular section?—A. That is right.

Q. Would you indicate on this item where the men's fancy shirts were sold?—A. This would be right here [indicating].

Q. This section which I will mark B, is that right?—A. That would be fancy Manhattan shirts right here [indicating].

Q. Yes; would you indicate where the ceiling price sign for those shirts were posted?—A. There is a wooden—right at the side of this elevator there is a wooden post, and the sign governing this section was right here, posted up right here [indicating].

984 Q. Right where I will mark the arrow. So if you stood at any point along the counter you could see it at the end of the counter?—A. That is right.

Q. Now, would you indicate where the military shirts were sold?—A. Well, at that time——

Q. Referring now to the time Mr. Fath visited the department.—A. At that time we had a few right there, right across from the Manhattan shirt department. They were right here in this little case [indicating].

Q. Where I make an X?—A. That is right.

Q. Was there a sign posted for those?—A. Not for those military shirts. They were so close to this I figured they were all right to take them both together.

Q. I see. Where were men's woven fabric shirts sold at that time?—A. These are Manhattans, too, but we had Hecht Company shirts right here at that time [indicating].

Q. These tables that I mark C, is that right?—A. In this section, that is right [indicating].

985 Q. Where was the ceiling price sign for those, do you recall?—A. We had two of them up on the wall; one here and one here. [indicating].

Q. Excuse me; I will mark this D instead of C. One where I mark the other arrow and the other arrow?—A. That is right.

Q. Did you sell those fabric shirts on aisle tables?—A. We did.

Q. Would you indicate where those tables were?—A. All the way down the center aisle and down this aisle and the back aisle [indicating].

Q. How were the signs posted on those tables?—A. Along the center aisle we had tables clustered together, two, two and two. There was one ceiling sign for this as long as the tables were together.

Q. They were, physically, end to end?—A. In the center aisle.

Q. And you had one sign for two tables?—A. That is right. But in this aisle there were three tables together and

986 I had one sign in the center table because the price of shirts were the same, but the shirts were separated for sizes, but the three tables were together. It was a small aisle from here to here [indicating].

Q. Yes. Where I marked an E. A. Where the sign was.

Q. And the shirts were all the same price?—A. That is right.

Q. And they were separated only by the sizes?—A. That is right.

Q. Do you recall where the rayon cotton pajamas were sold in your department at that time?—A. At that time it would be in this section right here [indicating].

Q. Right on this part that I will mark F, is that right?—A. That is right.

Q. Now, would you indicate to the Court where the signs were in that section?—A. There was one sign right here and one sign inside this section [indicating].

Q. Where I make the arrows?—A. That is right.

Q. Where was this sign, at the end of the counter?—A. It was right at the corner, here [indicating].

987 Q. Was it on a post?—A. On a post; yes. This was on a post [indicating]. This was one behind a glass door [indicating].

Q. What kind of a glass door is that?—A. A plain glass door that would be able to move out.

Q. A sliding door or opening door?—A. A sliding door.

Q. The sign couldn't be hidden by opening the door?—A. No, sir. The sign was right on the wall, but that little section is only about four inches thick and it doesn't make a difference which way you slide the door the sign would still be visible.

Q. You could read it through the glass?—A. Definitely.

Q. Now, do you recall where hosiery was sold at that time?—A. Hosiery would be right here [indicating].

Q. In this section [indicating]?—A. This would be hosiery [indicating].

Q. Where I circle and mark G. Now, do you recall where the signs for the hosiery were posted?—A. We had a

988 wooden piece of fixture here and it would be fixed right on here—this section—that was right on there [indicating].

Q. On the woodwork?—A. That is right.

Q. This is a poster?—A. Right here [indicating].

Q. Do you remember which side it was on?—A. It was on this side [indicating].

Q. Were there any other signs in that particular section?—A. Not in the hosiery section.

Q. Do you remember a display of men's garter grip socks at that time?—A. Vacuum grips.

Q. Vacuum grips; excuse me.—A. They were right on the table here [indicating].

Q. One of these tables [indicating]?—A. No. These two here and maybe this one [indicating]. We always kept them on these two tables. There may have been an extra table.

Q. I mark that H. Where were the signs on those?—A. Those two tables were together. The sign was right in the center [indicating].

909 Q. What kind of a sign was that?—A. A regular sign with a regular paper top.

Q. A ceiling sign?—A. Yes.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit 70.

(The document was marked "Defendant's Exhibit 70" and received in evidence.)

Mr. AUSTIN. Same objection, if the Court please. No cross-examination.

(Witness excused.)

Mr. HORSKY. I will call Miss Tynen.

ALICE TYNEN, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name for the reporter?—A. Alice Tynen.

Q. Are you employed by the Hecht Company?—A. I am.

Q. What is your position?—A. Cosmetic buyer.

990 Q. That is on the first floor?—A. Yes, sir.

Q. How long have you been in that position?—A. Thirteen years.

Q. As the buyer?—A. As the buyer.

Q. I show you, Miss Tynen, a plaque and ask you if that is a representation of the various aisles and counters and things in your department?—A. Yes; it is.

Q. Your department includes all of these [indicating]?—A. It does.

Q. Do you recall, Miss Tynen, when Mr. Fath came to your department?—A. Yes; I do.

Q. Would you indicate to the Court at that time where the ceiling prices were posted for soap?—A. For soap it was right on this [indicating]—this is a semi-circle.

Q. Yes.—A. Our whole soap section is right there.

Q. Let me indicate on this as A that you are referring to this section. The soap section.—A. Right there.

991 Q. This little part that I will mark B.—A. There is a wood panel there and we had two very large signs there on this panel here [indicating]. This, you go behind the counter [indicating]. This is in back of the counter, and this is the panel right there [indicating].

Q. Right here and the sign was on this [indicating]?—A. Yes, two very large signs.

Q. Two signs where I mark the arrow. Now, where in the department of these various places were you selling soap on the occasion?—A. We had a table here where we were selling—and this should be three tables instead of two.

Q. I will put another little table in the middle here [indicating].—A. Soap in the center here [indicating].

Q. Where you have marked X's. Were there signs on these tables?—A. No; there was not.

Q. The sign for soap was down here [indicating]?—A. That is right.

Q. And soap was sold along this counter?—A. Right there [indicating].

Q. Now, Miss Tynen, where do you remember Modess
992 was sold at this time?—A. Modess is always right there [indicating]. It is a permanent table for it.

Q. Let me mark that C so it won't be confused. Where was the sign for that?—A. Right here [indicating]. There is a panel right there, a large wooden panel [indicating].

Q. And the sign was right there?—A. That is right. It is about four feet——

Q. About four feet from the table?—A. Three or four feet; that is right.

Mr. HORSKY. I offer this in evidence as Defendant's Exhibit 71.

(The document was marked "Defendant's Exhibit 71" and was received in evidence.)

Mr. AUSTIN. Same objection.

No cross-examination.

Mr. HORSKY. Thank you. That is all, Miss Tynen.

(Witness excused.)

Mr. HORSKY. I will call Mr. Melnicove.

HAROLD K. MELNICOVE, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

993 Q. Would you state your name for the reporter?—A. Harold K. Melnicove, M-e-l-n-i-c-o-v-e.

Q. Are you employed by the Hecht Company?—A. Yes, I am.

Q. What is your position?—A. Display director.

Q. That is for the entire store?—A. That is correct.

Q. How long have you been in that position, Mr. Melnicove?—A. Since September 1942.

Q. '40?—A. '42.

Q. How long have you been employed by the Hecht Company?—A. Five years. Prior to that I was assistant display director.

Q. Yes. Mr. Melnicove, I show you a picture, a photograph,

which indicates ceiling price signs; is that a representation of the type of sign which previously was posted in the various departments of the Hecht Company?—A. That is correct.

Q. Now, these are on cardboard, is that correct?—
994 A. On cardboard.

Q. Pasted on with scotch tape?—A. Pasted on with scotch tape.

Mr. HORSKY. I offer that in evidence, Your Honor, as Defendant's Exhibit 72.

(The document was marked "Defendant's Exhibit 72" and received in evidence.)

Q. I show you another picture, Mr. Melnicove, with a series of table signs with tops; is that another type of sign which was in the store?—A. That is correct.

Q. And this is when it fits into these [indicating]?—A. Fits into the frames.

Q. Are these, Mr. Melnicove, the type?—A. This is the top that fits into another type of frame. It is on a frame on top of a rack that merchandise hangs on.

Q. Is this the type of top as shown in those pictures?—A. That is the type shown in this picture.

Q. Now, I show you another picture, Mr. Melnicove, of a long sign entitled "Ceiling Price;" is that the type that was also used in the store?—A. That is the type used in
995 cases where no frame was available.

Q. No place to post?—A. That is right; so it was posted in the case with scotch tape.

Q. That is this type of sign here [indicating].—A. That is correct.

Mr. HORSKY. I offer these pictures in evidence, Your Honor, Defendant's Exhibit 73 and 74.

(The documents were marked "Defendant's Exhibit 73 and 74" and received in evidence.)

Q. Mr. Melnicove, I show you this stand with the sign posted on it and ask you whether that is the type of sign that is being used in the Hecht Company now?—A. In certain departments we are using this type now.

Q. Have you made an investigation to determine how many of those signs there are in the store at this time?—A. We made 150 of these stands.

Q. How many?—A. 150.

Q. I show you a page, Mr. Melnicove, with various tickets on it. Up in the left-hand corner I notice tags with the printed "our ceiling" on it; is that the manner in which

the Hecht Company goods are being marked now?—
996 A. That is correct. All goods from the warehouse are marked in the warehouse.

Q. I notice on the middle a different type of ticket also has our ceiling stamped on it——A. That is right.

Q. That is apparently printed on with a rubber stamp.—A. I think our ceiling price is put on with a rubber stamp.

Q. This is made with the machine [indicating]?—A. This is a piece of type that stamps it on.

Mr. HORSKY. I will offer this as Defendant's Exhibit 75.

(The document was marked "Defendant's Exhibit 75" and received in evidence.)

Mr. AUSTIN. Before we get too far I would like to object to the introduction of this Court Please.

The COURT. It will be received.

Q. Mr. Melnicove, do you recall or do you know when these new type tickets were introduced, the date?—A. You mean the ones with the tags, the price tickets?

Q. Yes.—A. No, the price tickets don't come under
997 my control at all. I wouldn't know the date.

Q. Thank you. Mr. Melnicove, I show you the purchase order to the Goodhart Printers which I believe is one that was indicated requisitioned by you, is that correct?—A. That is right.

Q. That calls for 2100 sign tops for ceiling price regulations. Would you indicate what those were, if you remember?—A. Those are types of sign tops the same as the one you showed before.

Q. That is one type. This one [indicating].—A. The triangle one you have in your hand is made in three sizes. You have only one size there.

Q. That is what is called for there?—A. That is what is called for here.

Q. The date of that is what?—A. May 13.

Q. That was before the General Maximum Price Regulation went into effect on May 18, is that correct?—A. That is correct.

Q. Do you recall the circumstances of ordering those signs?—A. Yes; I do.

998 Q. Would you explain why they were ordered?—A. Why those were ordered from Goodhart?

Q. Yes.—A. Goodhart does all our printing; and he has the dies that die-cut these tops, and whenever we order tops he prints them for us.

Q. I see. Thank you. I show you another purchase order,

Mr. Melnicove, that I think also bears your requisition, is that correct?—A. That is correct.

Q. That is for 100 posters, OPA price control regulation. Is this the poster that was called for with that [indicating]?—A. That is the poster.

Q. The date of that is what?—A. May 11.

Q. Were those posters put up in the store?—A. They were.

Q. The 100 of them?—A. All the 100 of them.

Q. All the 100 of them?

Mr. HORSKY. I would like to offer these two requi-
999 sitions in evidence. I don't think I will offer this [indicating]; it is too big.

(The documents were marked "Defendant's Exhibit 76 and 77" and received in evidence.)

Mr. HORSKY. This poster reads, for the record: "This store is conforming to OPA regulations on price control." And it is about——

The WITNESS. 22 by 38.

Mr. HORSKY. 22 by 38.

The COURT. We will take a five minute recess.

(A short recess was taken.)

1000 Mr. HORSKY. I have no further questions for this witness, Your Honor.

Mr. AUSTIN. No cross-examination.

Mr. HORSKY. I will call Mr. Bennett.

LEONARD R. BENNETT, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name to the reporter, please?—A. Leonard R. Bennett.

Q. Are you employed by the Hecht Company, Mr. Bennett?—A. Yes, sir.

Q. In what capacity?—A. Charge of sign shop.

Q. How long have you been there?—A. One year.

Q. Do you recall, Mr. Bennett, the occasion upon which the OPA general maximum price regulations signs were prepared in the shop?—A. When they were prepared?

Q. Do you recall that occasion?—A. Yes.

Q. Will you tell the Court how they were prepared
1001 and how many were prepared at that time, as well as you can remember?—A. I believe the date it went into effect was the 17th; when the store opened on that morning, the store was covered, every department.

Q. What did your shop do?—A. We put the ceiling prices given us by the buyers and so forth on these signs that you had on exhibition a few minutes ago.

Q. How many days did you work on the preparation of these original signs at that time, Mr. Bennett, do you recall?—A. Three days and two nights.

Q. How many people were helping you at that time?—A. Five besides myself.

Q. Six of you altogether?—A. I mean on the actual printing.

Q. Yes; and you worked the general maximum price——A. There were six, that is correct. I had one extra one on also besides our regular crew.

Q. The regulations went into effect on Monday; did you say that you worked on the Sunday before, too?—A. Yes.

Q. And on Saturday?—A. Saturday night, and all night the night before.

1002 Q. Do you recall, Mr. Bennett, how many signs you prepared at that time, do you remember?—A. It took in the neighborhood of 2,500 to cover the store the first time.

Q. How many have you prepared since that time?—A. I figured it up to about the first of December it would run about 7,000 ceiling price signs.

Q. Including the first—2,500?—A. Yes.

Q. That is all.

Mr. AUSTIN. No cross-examination.

Mr. HORSKY. I will call Mr. Sarazen.

BERT SARAZEN, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name for the reporter?—A. Bert Sarazen.

Q. You are employed by the Hecht Company?—A. Yes, sir.

Q. What is your capacity there?—A. I am director of publicity and advertising.

Q. How long have you been employed in that capacity?—A. Almost seven years.

1003 Q. Do you recall, Mr. Sarazen, a telephone call from a gentleman in the Office of Price Administration in April of 1942?—A. I do.

Q. What was the gentleman's name?—A. He gave me the name of John Young.

Q. Would you explain what the call was about, what you

talked about?—A. The gentleman introduced himself over the telephone and stated that he was a former member of Young & Rubican, a large New York advertising agency. He said that he was now helping the Government in the OPA to prepare a booklet in connection with ceiling prices, and he wondered if we would be good enough to lend him our facilities to supply some art work for the booklet.

Q. What did you tell him?—A. I asked him how much art work was involved. He said on a couple of pages of small sketches. I asked him how he wanted them rendered and he said pen and ink. I told him we would be very glad to help him.

Q. Did you have any hesitation about it?—A. Not at all. It has always been our position to contribute anything we could of our advertising and publicity facilities to various departments of the Government.

Q. That is all with this witness, Your Honor. Just one moment, Mr. Sarazen, did you have this done in your department?—A. I called Mr. Mays, B. Allan Mays, who was
1004 our layout director at that time. He is now in the Civil Air Patrol. And asked Allan to go over to Mr. Young's office to get the roughs, the rough sketches, that Mr. Young would give him to show him what to do in the way of art work. Allan went over, brought the roughs back. That is a rather technical word. I suppose you know what I mean. It is a very rough pencil sketch from which the layout man will make a finished pencil sketch. Allan got the instructions and turned them over to Mr. Schneider on the staff, who did the pencil sketches, and finished, completed the inking of four or five of the drawings, and the rest of the staff did the balance of them. When they were finished, Mr. Mays brought them to me. I looked at them and sent them back with him to Mr. Young.

Q. Thank you, that is all, Your Honor.

Mr. AUSTIN. No cross-examination.

Mr. HORSKY. I will call Mr. Schneider.

MORELAND SCHNEIDER, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Would you state your name for the reporter, Mr. Schneider?—A. Moreland Schneider.

Q. Are you employed by the Hecht Company?—
1005 A. Yes, sir.

Q. In the advertising department?—A. In the advertising department.

Mr. HORSKY. Your Honor, I am going to ask the witness to identify in General Maximum Price Bulletin No. 2 the pictures on pages 24 and 25 as pictures which he prepared and some of which he inked. I have asked the Government counsel for the original so he could identify them, and he said they were no longer available, so I am going to ask him to identify these.

By Mr. HORSKY:

Q. Do you recognize these pictures appearing on pages 24 and 25 of the General Maximum Price Regulations as the pictures which you prepared?—A. Yes, I do. I penciled them all in, and I rendered four of them myself, and I supervised the rendering on the others.

Q. When you say render, what do you mean?—A. We take the rough pencil layout and from that we make our finished drawing which is in detail.

Q. In ink?—A. And then after we pencil the drawing, we go over the pencil lines in ink.

Q. Rendering?—A. Rendering is inking in the pencil drawing.

Q. Are these—you gave these drawings to Mr. Mays
1006 when you finished, is that right?—A. That is right.

Mr. HORSKY. That is all, Your Honor.

Cross-examination by Mr. AUSTIN:

Q. It is your statement, is it, that these were made up from rough sketches furnished by Mr. Young?—A. Well, no, I worked in the pencil sketches that Mr. Mays furnished me. He made a rough layout of what was wanted. He contacted Mr. Young.

Q. Yes. All right; that is all.

Mr. HORSKY. I will call Mr. Loman.

WILLIAM LOMAN, a witness called by and on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. HORSKY:

Q. Could you state your name for the reporter?—A. William Loman.

Q. Are you employed by the Hecht Company?—A. Yes.

Q. What is your capacity at the Hecht Company?—A. Personnel relations manager.

Q. How long have you held that position?—A. On
1007 that particular position in its present ramifications for a period of about three years.

Q. And prior to that?—A. Prior to that I have always been concerned with personnel, but I bore the title first of personnel director and then of research director, and I have been with the Company a total of 15 years.

Q. In those various capacities?—A. That is right.

Q. What is your educational background, Mr. Loman; that is, in what are you particularly qualified?—A. I am primarily trained in personnel. I suppose I would call myself a psychologist, inasmuch as I have trained in that particular line both at George Washington University, at Columbia, and, as a matter of fact, I have lectured in industrial psychology at George Washington University for the past 16 years.

Q. Past 16 years, did you say?—A. Yes.

Q. Mr. Loman, have you prepared a schedule of the costs, direct and indirect, of the price-control office at the Hecht Company?—A. Yes.

Q. I show you a schedule and ask you if you prepared that schedule?—A. I did.

1008 Q. Would you explain to the Court the elements which enter into the last part of this schedule which say "direct costs."?—A. Well, about the middle of December I was asked to prepare the costs, both direct and indirect. Now, with regard to the direct costs of the price control, I first took the person's register from my personnel office record, and their *their* weekly rates, and arrived at the weekly figure from the standpoint of my pay roll. I then went to the controller of the Company and ascertained the amount being spent on the private pay roll, with persons directly concerned with price control charged to that.

Q. The executive pay roll; is that correct?—A. That is correct.

Q. The store pay roll?—A. That is right. Then, in addition to that, I took the figure that I was paying to an outside company—that is, the Washington Calculating and Inventory Company—for comptometer operators, because I was unable to procure them.

Q. And those elements enter into direct costs?—A. Those elements enter into these costs.

Q. Did you include in those, Mr. Loman, any of the costs of people who might be temporarily assigned to the price-control office?—A. No. It is my practice that where I have divisions that are behind in their work, or who need ad-

1009 ditional help, and I am unable to get such help, I very often shift people from one department to another, and I don't make any change or pay-roll charge. Now, in the case of the price-control office, I have often loaned them-people

from other departments, but I have never taken anyone from price-control office to give to someone else.

Q. These direct costs do not represent——A. Those are not added in that figure.

Q. Now, I would like to have you explain to the Court how you arrive at the figures which are listed here as indirect costs. I notice that you have various types of persons, divisional men, buyers, assistant buyers, and the like, and various percentages; would you indicate first how much information you have with respect to the work that each of the various classes of people in the store is doing. Is that part of your——A. Yes; I am the ranking personnel officer, and among my other duties, of course, is the question of job analysis, and job classifications is part of my responsibility.

Q. Excuse me; finish your answer.—A. I was going to say, as a result of that, it is necessary, not that I know exactly every job but pretty nearly the duties of everyone employed at the Hecht Company.

Q. Do you determine when new people are necessary in a particular spot and when too many people are in a par-
1010 ticular spot?—A. Yes; that is part of my responsibility.

Q. These percentages which appear after the names are, then, your estimate of the amount of time spent by those classes of people on OPA work, is that right?—A. Well, at the best, of course, these are my estimates; but I believe that they are reliable, because I do know a great deal about the work, and I checked to—I think I might be called a trained observer, if you can put it that way, of people, and in going to these departments to check how much of their time was being taken up with OPA work, I had done some of that before I was asked to do this, because I have had a great deal of complaints for additional help around the store, and the cry was, of course, for OPA work—OPA work—so naturally before I could put on additional people it was necessary for me to visit those departments, make observations, and see whether or not it was a cry of "wolf" or whether an actual need existed, and these percentages, I might say, I think are very conservative in that respect. Let's take, for example, the—I put down here comparison office, take the highest one as being 50 percent of their time. Actually I feel that the comparison office perhaps should be charged direct one hundred percent into OPA. We have hired additional shoppers to do nothing but that, and our old comparison shoppers are practically doing nothing but check-
ing from the standpoint of establishing ceiling prices.
1011 But here I have put it down at 50 percent, because they are called upon to do other types of shopping.

Q. The figure in the right-hand column, the weekly amount, is what—ten percent of which week, do you know?—A. Yes; this was the week of December—the pay-roll week ending December 19th. And those figures were arrived at by applying my percentage to the pay-roll for those various departments.

Q. Why was the week of December 19th picked?—A. It just happened to be the week that I was asked to give an estimate of the cost——

Q. Is that apt to vary very much from week to week, the total for those various departments?—A. No; they would run about the same. Of course, in the month of December there might be a difference between the amount of July, but I would say pretty nearly constant throughout the year.

Mr. HORSKY. I will put this in evidence, your Honor.

Mr. AUSTIN. Object.

The COURT. It will be received.

(The document was marked "Defendant's Exhibit No. 78" for identification.)

By Mr. HORSKY:

Q. Mr. Loman, can you tell us how many people approximately are employed by the Hecht Company?—
1012 A. You mean average number?

Q. Average number.—A. Somewhere between 1,900 and 2,000.

Q. Could you tell us what the turn-over in that has been during the past year?—A. Well, the turn-over figures for the entire year, taking it on the entire period, I guess, would run around 200 percent. I did prepare figures at the end of the year on that, and I have here the exact average; average number of employees was 1,930—that is, regular employees, not our contingent workers—and during the year we had 3,456 regulars that left our employ. It has been a tremendous task this past year in personnel with turn-over.

Q. What steps do you take to recruit new employees? Have you taken any extraordinary step?—put it that way.—A. Yes; we have contacted clubs, we have contacted schools, we have advertised in every way that we know how. As a matter of fact, our advertising has run up tremendously this past year. We spent on just advertising for personnel better than $14,000.

Q. Have you received any instructions with respect to supplying of personnel to the price-control office as to the priority or lack of priority which that office has on the personnel that you are able to obtain?—A. Quite definitely.

1013 Q. From whom did you receive those?—A. From the general manager, Mr. Dulcan.

Q. What were the instructions?—A. The instructions.

were that that was work that had to be done, and if I crippled other departments that I must get them help. I might say, even in the face of that, I have never gotten up to the figure or number of people more or less agreed upon as necessary by Mr. Etelson and myself. That is the reason why I have had to loan people. As a matter of fact, that is the reason other executives who were not charged in either the direct or indirect cost here have been working on that problem.

Mr. HORSKY. That is all, Your Honor.

Mr. AUSTIN. No cross-examination.

Mr. HORSKY. I will call Mr. Dulcan.

CHARLES B. DULCAN, Sr., a witness called by and on behalf of the defendant, having previously been duly sworn, was examined and testified as follows:

By Mr. HORSKY:

Q. You are the same Mr. Dulcan that previously testified as a witness for the plaintiff in this case?—A. Yes, sir.

Q. Are you employed by the Hecht Company?—A. Yes, sir.

Q. Could you state your position at the present time?—A. At the present time I am the vice president and general
1014 manager.

Q. Of the Washington store?—A. Of the Washington store.

Q. When did you start work with the Hecht Company?—A. July 1912.

Q. And in what capacity?—A. I started as a salesman. It was a contingence job, a temporary job, supposed to last about three days.

Q. And did it last longer than that?—A. Yes, sir.

Q. How long did you continue in that capacity?—A. I continued as a salesman for approximately a little less than a year, and then I was made assistant buyer in this department, men's furnishings, and then I was transferred from there as the assistant buyer in the women's ready-to-wear department. It was a promotion, because the ready-to-wear departments were large departments. Ultimately I become a buyer of some of the ready to wear. Later I became a divisional merchandise manager, which included the ready to wear as well as the men's wear. Ultimately I was made the general merchandise manager of the entire store.

Q. When was that, do you recall?—A. That was approxi-
mately in '23. I was then made general manager. That
1015 happened in 1936. I might say that in '23 I was also elected to the board of the corporation as a whole, the merchandise corporation, with headquarters in Baltimore, and named a vice president.

Q. And you assumed your present position in 1936?—A. In 1936; yes, sir.

Q. Would you indicate to the Court very briefly, Mr. Dulcan, what, in general, your duties are in the position of general manager of the Washington store?—A. General manager duties, as constituted in our store, is virtually a chief of staff. I set the policies, and I am concerned with the personnel, the treatment of it; I am concerned with the public goodwill, I am concerned with all of the activities that pertain to the management of a store, and primarily with its policies.

Q. You are, then, acquainted not only with the large aspects of the store, but to the extent that is necessary with the details of the store as well?—A. I would say that I am rather well acquainted with the details of the store, and I believe I was greatly helped in learning these details as a result of my promotion from post to post; that is, in my fortunate growth to my present position.

Q. Let me take the Hecht Company for a moment, Mr. Dulcan.—A. I am sorry; I didn't hear.

Q. Let me ask you a question or two about the Hecht
1016 Company itself. Do you know whether the store—or when the store was first established?—A. About 46 years ago.

Q. And was it in its present location?—A. It occupied one building in its present location. When I came with it it did a little less than a half million dollars, or approximately that. It has reached the point o' volume this year, it will reach 20 million dollars, the close of the present fiscal year, which ends the end of January.

Q. Has its physical equipm nt expanded during that time?—A. Yes, sir; both the store property, other customer facilities, as well as warehouse facilities, service buildings, and so on.

Q. The first store was much smaller than the present one?—A. The first store was a single five-story building. The present one occupies a great deal of the entire block squared by 7th Street, E Street, F Street, and 6th Street.

Q. Do you recall, Mr. Dulcan, before the general maximum price regulation was issued, any steps that you took with respect to preparation for the issuance of price controls by the Office of Price Administration?—A. Yes, sir; I do. It was early in 1942 and prior to the enactment of the price control
1017 law. I began to lay the foundations for the educational program with our people. It was at that time that I appointed Mr. Robert Levi to head up this division; that is, the price-control bureau within the store.

Q. Why did you appoint Mr. Levi, if you could tell the

Court?—A. I felt as a result of his educational qualifications and because he had but recently spent a great deal of his time in various portions of the store, that he would be best qualified to do that job.

Q. And at the time that you appointed him, the general maximum price regulation had not yet been issued?—A. No, sir; we were beginning to establish an organization prior to the issuance of those regulations.

Q. Did you make any study, Mr. Dulcan, of the price-control regulations of any other country, or have any information with respect to that at this time?—A. Our study—of course, we read all of the printed matter that came from both Great Britain and Canada; but we did a special thing, in that it was just about that time when we were beginning to set our house in order to establish an organization that we sent a member of the board, at my request, Mr. J. Jefferson Miller, to Canada to study what they were doing with regard to price-control regulations and with regard to compliance.

Q. Did Mr. Miller report to your executives?—A. Mr.
1018 Miller first sent us a typewritten copy of the result of his investigation. Following that, he came to Washington. His headquarters are in Baltimore. At that time I instructed the merchandise managers, supervising heads of our service divisions, that I thought might have to do with price control, and Mr. Robert Levi to be present, at which time there was a conference wherein we discussed the results of Mr. Miller's trip to Canada.

Q. This was before there was a general maximum price regulation?—A. Yes, sir.

Q. At the time that you created the price-control office and put Mr. Levi at the head of it, did it have separate office space in the building?—A. We were right crowded, but we established a separate space for Mr. Levi.

Q. Where was that?—A. That was located on the same floor that my office is. I felt it would be desirable, for the beginning anyway, for him to be as close to me as possible, and also to Mr. Davidow, our general merchandise manager.

Q. Did you give any instructions with respect to the other departments of the store, so far as cooperating or helping Mr. Levi—that is, what were your instructions to the rest of the store?—A. First I told Mr. Levi that he was not a one-
1019 man team, that he could have the benefit and the use of the control division, the accounting division, the shopping bureau, or any other branch of the store that could help him organize himself in order to comply with the OPA regulations.

Q. Who is Mr. Davidow?—A. Mr. Davidow was our general merchandise manager, who supervised all of the merchandising of the entire store.

Q. Did you give him any instructions with respect to Mr. Levi?—A. Mr. Davidow and I conferred about all of these matters. I advised Mr. Davidow that I intended to appoint Mr. Levi to this position. He heartily concurred. I also had it understood with Mr. Davidow, as the general merchandise manager, it was necessary for him to take the responsibility, or a responsibility, an interest, in the development of this organization for price control.

Q. Did you place, or did you give Mr. Levi a budget at that time?—A. I can't say that I gave him a budget. I believe I could put it better this way, by saying to Mr. Levi: "I do not know the extent of this work, nor what might be involved, and I say to you, Mr. Levi, you are at liberty to increase your budget and employ those people that you think will be necessary to help you do a good price-control job."

Q. And the same would be true with respect to other
1020 expenses, other than personnel, such as publications?—
A. I gave him carte blanche.

Q. Do you recall also before the issuance of general maximum price regulations, Mr. Dulcan, a visit by Mr. Coombs and Mr. Brill, of the OPA, to your office?—A. It was about the middle of April that Messrs. Coombs and Brill—Coombs and Brill made a visit to our establishment, and Mr. Coombs requested that——

Q. Did they visit you personally?—A. They requested—yes. They came to the establishment and asked for me. I ushered them in promptly. Mr. Coombs, and he was accompanied by Mr. Brill, said that shortly there would be issued the price-control regulations, and he would like to know if I would care to talk with him about the character of the regulations and what light I might be able to throw to help them simplify those regulations. I requested Mr. Coombs to permit me to ask Mr. Davidow, our general merchandising manager at that time—he has since become a Captain in the Army, and he is not with us—whether he would permit him to visit with us, and he said that would be satisfactory. That is Mr. Coombs. Then we four, I think, spoke for about an hour. The general tenor of the conversation was as follows: Mr. Coombs began to ask some questions about the details of the regulations, and
it was then that I said this to him—I said: "Mr.
1021 Coombs, the retail business is a bit complicated. I
would like to offer this suggestion. We would like to place at your disposal our organization and our establishment

to use it as a laboratory, as it were, in order that we both might benefit; that is, that the regulations might be as simple as possible, and we would have the least problem in following them." I suggested that an office was not a good place in which that should be done; that it would be best done in the store, in the departments, in the warehouse, in the receiving room, the invoice department, and at all other points where a practical visualization of the job could be had, and I said, "With that in mind, I would be very happy indeed to supply you with all the personnel and help that you will require to do that."

Q. Did Mr. Coombs then go through the store?—A. Coombs thought that was a good idea, and he went through the store—no; I sent for Mr. Etelson. Mr. Etelson at that time was serving on a jury; and if my memory serves me right, he was just back there for lunch. I believe Etelson, in turn, introduced Messrs. Coombs and Brill to Miss Herron, the head of our comparison office, and requested she take these gentlemen through the store.

Q. Did you see them again after that?—A. Before Mr. Coombs left my office, I said I would be very glad to discuss the results of his survey with him, when he had concluded. I was not requested to do that.

1022 Q. Did you have any meetings of your buyers clinic that you attended or at which you spoke about price control before the issuance of the general maximum price regulation on May 18th, do you recall?—A. We have a meeting every Saturday morning which we call a clinic and have called it that for a good many years, exactly why I am not sure. But at any rate, they are usually present at this meeting, all of the executives, and some high executives of the entire store. It usually takes place on Saturday mornings in the winter. When we close on Saturdays it occurs on Friday morning, in the summer. It was at a meeting of this kind that I spoke. First Mr. Levi discussed OPA regulations, and later on I summarized, as I generally do; no matter what elements might be discussed at this meeting, I usually summarized and endeavor to make the various points that had been discussed by the previous speakers.

Q. Is this before the general maximum price regulations?—A. This is prior to the general maximum price regulations.

Q. Do you recall what you stated at that time?—A. At one of these—I was leaving the city prior to the Saturday that one of these clinic meetings were to take place, and because of that I sent a memorandum to Mr. Loman, who usually acts as chairman of our meetings, of our clinics. It is dated April 29, 1942. I sent this to Mr. Loman. My secretary, Mrs. Ellis, for-

warded it to him. I requested Mr. Loman to read an
1023 article which is attached. May I read it?

Q. Yes. This is the memorandum you sent to Mr. Loman?—A. This is the memorandum that my secretary sent to Mr. Loman, at my request.

Q. That you dictated to your secretary?—A. Yes, sir. It is dated April 29, 1942: "Mr. Dulcan asked me to pass this along to you to be read at the clinic on Saturday morning with the following comment from him: 'I recommend this' "—I am quoting myself now—" 'be read, because it is clear-cut and simple and tells a retailer's story honestly. In closing, I want to say that whatever the regulations may be that are ultimately promoted' "—that is an error; it means "promulgated"—" 'by the Government, the Hecht Company is going to fulfill the requirements, and we will live one hundred percent within the law. We will tell you what those regulations and laws are when they finally come out, and we hope you will understand that it is the law and law during wartime. Each of us must accept the responsibility of fulfilling the Government's edicts and laws, no matter how difficult or complicated the problems. I trust you thoroughly understand this.' "

Q. That, Mr. Dulcan, is approximately the time the general maximum price regulation was issued?—A. That was prior to the time.

1024 Q. But it was just about that time?—A. It is dated April 29. The maximum price regulations were issued just around about that time.

Q. That is right. Do you recall any meetings at which you spoke subsequent to the issuance of the general maximum price regulation?—A. Upon my return from New York the following Saturday, after this note was issued, there was a clinic meeting at which we discussed the maximum price regulations. As a matter of fact, sir, the times—I am sure we have no records, nor did we attempt to recall the number of meetings we have had both with our merchandise staff and with our general staff throughout the store. They were legion.

Q. Do you recall speaking at any of these meetings, Mr. Dulcan, or did you speak at several of them?—A. I spoke at a number of them.

Q. What, in general, was your position at that time with respect to the general maximum price regulations as expressed to the members of the clinic? What did you tell them about the regulations?—A. I told them it was not a matter of choice or of opinion, that here were regulations and it was our business to become familiar with them, and our business to comply with them, and that if they were not able to understand some

of the regulations, that it would be their business to ask at our bureau, and if our own bureau did not understand, it
1025 was their business to get the information or interpretations from the OPA bureau located in Washington; that is, the Government Bureau.

Q. Yes. You stated that at one meeting or several meetings?—I did not quite understand what your answer was.—A. I would say we discussed this at many, many meetings, both small and large.

Q. And that has been your consistent position?—A. Yes. Of course, our primary idea was that if we could train our executive staff—that is, the eight topmost people—and if they would have a clear-cut understanding of the regulations, it would be easier to send that down the line to the buyers and others who would be directly responsible for the work.

Q. May I ask you, Mr. Dulcan, is that your present position with respect to the regulations?—A. By all means.

Q. This system, as I think you testified in answer to the question asked you at the outset of the trial by Mr. Austin, is based on the buyers, is that not correct?—A. I am sorry; I will have to ask you to repeat that.

Q. The system of price-control regulations is based on the buyers, is that correct?—A. Yes, sir; it is. It must be.

Q. Would you indicate—you have been a buyer yourself, have you not?—A. Yes, sir.

1026 Q. Would you indicate very briefly the kind of work that a buyer does in a store?—A. Well, fundamentally, a buyer's job obviously is to know the needs of his community and to make plans to purchase those needs in the wholesale markets, and to follow through those plans to see that those goods arrive in the establishment, and to see that they are marked, and to see that they reach their department, and that they are offered for sale to the consuming public. That is basically, fundamentally, the buyers' job.

Q. Does he have records to keep in connection with his regular work?—A. Yes.

Q. What kind of records, for example, does a buyer ordinarily keep?—A. We do not attempt to make an accountant of a buyer, but there are certain records in connection with the various steps of his work that he must keep in order to know what he is doing; that is, for instance, the amount of his stock.

Q. That is his stock from records?—A. He must know the amount of his stock; yes; he must know certain of the classifications that he is selling. He keeps records of that because it is by those records that he reorders or does not reorder. And

he analyzes his inventories in order to see that there is a proper balance between inventory and sale.

Q. Does he take the inventory himself, or assist in
1027 it?—A. The inventory may be taken by the buyer or it may be taken under the jurisdiction of the buyer. Do you mean the fiscal inventory of the store as a whole, may I ask?

Q. Yes.—A. We have two fiscal inventories a year, annual and semiannual. That is not in the hands of a buyer except as they may help to supervise; the inventories I have in mind are the merchandise inventories that have a relationship to the job of buying and selling goods.

Q. He does the ordering and makes out the requisitions and things of that sort?—A. Yes; he does. He analyzes his statistics. He may make certain of his own statistics. Sometimes it is duplicated and his own idea because he thinks he can best understand his records, anyway, but basically there is a certain amount of work that every buyer must do, paper work that every buyer must do in connection with his work.

Q. Is it fair to say that a buyer is a sort of a head of a little store of his own subject to the general supervision of the merchandise managers and yourself?—A. I have written an article. I think the headline was, "If You Owned a Store," just to the buyers of the country, for the purpose of establishing their responsibility, and how to be successful buyers, to the best of my knowledge, of course.

1028 Q. Do you recall, Mr. Dulcan, the occasion upon which Mr. Etelson succeeded Mr. Levi as price control administrator?—A. Mr. Levi——

Q. Do you recall the time, approximately?—A. Yes; it was about the middle of May.

Q. Why did you pick Mr. Etelson to succeed Mr. Levi, would you explain that to the Court?—A. Mr. Etelson had been with us for a good many years. I had a very high opinion of Mr. Etelson's ability. I felt that a strong man was necessary in this job and not only a strong man, but a well-informed man. And his work prior to this had taken him through many sections of the store. He knew intimately all of our executives and he knew the details of our business. I therefore felt that he was best able to do the job which I considered a very important one.

Q. Did you give him, or did you place on him any limitations with respect to personnel or expenses, or did he occupy the same position as Mr. Levi in that regard?—A. Definitely the same position. There were no limitations either to budgets,

personnel, or any requirements necessary for the proper conduct of his bureau of price control.

Q. Did you hear Mr. Loman state that he had received instructions from you with respect to priority, is that correct?—

A. I heard him state that. I was the one who made the
1029 original statement, of course. I told Mr. Loman in view of the fact that it was so difficult to get personnel, it was essential to give this bureau priority, because it was a Government bureau and we could not afford to take any chances.

Q. Has the price control office, the physical office itself, expanded since Mr. Etelson has been in?—A. Several times.

Q. Do you recall, Mr. Dulcan, the large poster?—A. Yes, sir.

Q. That Melnicove testified he ordered. Did you prepare that?—A. Yes, sir.

Q. Would you explain what the purpose of that poster was?—A. I felt that while I knew nothing in the regulations that required it, that I wanted to invite the consuming public that if there were any mistakes, I wanted the public to call it to our attention. I felt in a large poster of this type we might impress upon the people that the Hecht Company was desirous of complying and that if it made any errors the public would be encouraged to report and we would be able to correct it. That was my reason for designing and having circulated a hundred of these posters.

Q. They were put up in the store?—A. Within the store, where the public congregated.

1030 Q. Do you recall, Mr. Dulcan, the occasion of the investigation of the Hecht Company by the Office of Price Administration recently?—A. Yes, sir.

Q. Did you receive the investigators yourself, did you see them personally, or any of them?—A. At the beginning of the investigation I did not.

Q. Did you issue any instructions with respect to the manner in which the investigators should be treated by the store and by its personnel?—A. Yes, sir.

Q. What did you state?—A. I said these were Government investigators, and they had a right in our store and they had a right to ask questions pertaining to price regulations and postings, and that I expected our people to give them every courtesy and cooperation.

Q. You told the people to help the investigators?—A. Yes, sir.

Q. The Hecht employees to help the investigators?—A. Yes, sir.

Q. You stated that you did not see them at the beginning of the investigation; did you see them later?—A. Yes, sir.

1031 Q. Whom did you see, do you recall?—A. I informally met Mr. Kaplan and Mr. Fath.

Q. What was the occasion?—A. There was one particular occasion. This was on the day when we were dedicating some series of windows to the Seabees. That is a branch of the Naval——

Q. That is S-E-A-B-E-E-S?—A. That is right. That is the construction battalion of the United States Navy, and we dedicated a series of windows, the primary purpose of which was to give the public an idea of what the Seabees did, and to help recruit Seabees for this branch of the service. Mr. Etelson came to my office and there were quite a number of gentlemen from the Navy Department there. My office, Mr. Hecht's office, the outer foyer, Mr. Quirk's office, and several other offices were turned over to this occasion on that day. Mr. Etelson told me that Mr. Kaplan and Mr. Fath would like to see me. As my office was occupied, I said I would go to his office. His office, too, was occupied, so I met Mr. Etelson and Mr. Fath and Mr. Kaplan in Mr. Sarazen's office, our publicity director. There seemed to be not a conflict, but a difference of opinion. I forget which of the two gentlemen from the investigating staff of the Government told me that I had made promise that these reports would be ready and that they were not able to get them. I then turned to Mr. Etelson and said, as I would, "Look, why don't you give these gentlemen the report" and he said, "Well,

1032 I am asking for a little more time because I have discovered some errors and I would like to check a little more in order that these reports not go to the Government with these errors in them." I turned to these gentlemen and asked them if it would be possible for them to have more time, and they felt that it would be best that we turned the reports in. I pointed out to them, at least I made the statement, I said, "You know, if these, if some of you folks have made an error, it might be best to give us an opportunity to check them. However, if it is your wish that you have them, you may have them," and I turned to Mr. Etelson and I said, "Regardless of your judgment in the matter, or opinion, we made a promise, and we keep that promise; turn the reports over."

Q. Did you see anyone else in connection with the investigation either at that time or later?—A. I was——

The COURT. I think that will be all for today.

Mr. HORSKY. Your Honor, Mr. Dulcan is our last witness and I have only about five minutes; could I finish up with him?

The COURT. Then there will be cross-examination.
Mr. HORSKY. I am sorry.
The COURT. We will have the rest of that in the morning.
(The Court adjourned at 4:00 P. M.)

* * * * *

1036 PROCEEDINGS

(The proceedings began at 10:15 A. M.)
The COURT. Mr. Horsky, you may have the witness again.
Mr. HORSKY. Thank you, Your Honor.

CHARLES B. DULCAN, a witness having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination by Mr. HORSKY:

Q. Mr. Dulcan, at the conclusion yesterday I believe you testified with respect to your meeting with Mr. Kaplan and Mr. Fath, is that correct?—A. Yes, sir.

Q. Did you have any subsequent meeting with any of the investigators or any persons connected with the OPA subsequent to the investigation?—A. Yes, sir.

Q. Will you explain to the Court what those meetings were and what happened?—A. I was away from the city when I received a call from Mr. B. L. Brown, our executive controller. He seemed a bit agitated and I asked him what was worrying him and he said that there was an OPA investigation
1037 which had begun in the store with regard to the price ceiling prices and with our posting. He asked me if I had any instructions and I said, "Yes, I have. My instructions to you are to keep your feet on the ground; keep calm. I am sure there is no harm intended anywhere. I know we have done all that we possibly can, and I do not believe that any unusual problems will arise. Keep on punching! Keep on doing your job!"

He thanked me. He was glad that I took that position, and the conversation on that subject at that time closed.

When I returned to the city—which was several days later—I learned that Mr. Brown had made an engagement with me for Mr. Harris who, I think, is with the Industrial Council of the OPA.

That engagement was, I think, on the 10th of October. I am quite sure. I believe it was two or three days after I returned, or two days after.

Mr. Harris wanted to know the reason for my visit, and I said, "Very frankly, the engagement was made in my absence. However, I can give you as best I can the reason that our people

made this engagement. An investigation has been started in our store. I want you to know, sir, that we want to give every cooperation to the investigator; that it is our desire to be helpful, and that if there are some things brought out by the investigator that will enable us to comply more efficiently,
1038 we would like to have that information.

Mr. Harris—we chatted for a little while and Mr. Harris then said that was all right; that this investigation was not punitive, and when it was all over he would be glad to discuss the matter further. Then the visit terminated.

Q. That is the last contact you have had with the investigators yourself, Mr. Dulcan?—A. I might say that Mr. Harris never asked us to discuss the full result of the investigation.

Q. Yes; Mr. Dulcan, have you issued any instructions with respect to the repayment of the overcharges which have been disclosed in this evidence?—A. Yes; I have. I would say that from time to time a business of our size is bound to make some errors. Sometimes it is overcharge and not infrequently undercharge.

However, when it is overcharge and we ascertain those facts, we reimburse the customer. Obviously we follow the same ethical precept in this instance.

Q. And you have issued instructions?—A. Orders have been given, yes.

Q. What do you propose to do in this instance where there is not any possibility of identifying a customer?—
1039 A. Wherever possible and as far as it is within our power where we can ascertain that there is an overcharge but we cannot trace that to a particular customer, we propose to set up that total as a reserve and give it to some worthy local charity.

Q. That does not apply only to the departments investigated in this case, but any mistakes that you found, is that true?—A. Any mistakes that we have made in the past and any mistakes that may possibly occur in the future.

Q. If I can ask it generally, Mr. Dulcan, what is your present attitude with respect to the OPA and the efforts of that office to control the rise in prices?—A. My attitude today is what it was in the past and what it shall be in the future—to do everything within my power and within the power of the personnel within my organization to see that the price laws are observed.

We have gone much further as a result of the good information we have received through this investigation. We have broadened our methods; we have improved our methods. We have learned something. We propose to use all of that in order to comply as completely as is within human power to do

Q. Incidentally, Mr. Dulcan, are you personally connected with any local activities of any sort—public activities?—A. Many years ago I felt that just selling goods was
1040 not enough, or that just making money was not enough. I felt that as the business grew and I grew with it that it ought to become an integral part of the life of the community, and because of that I encouraged our participation and participated myself in many charitable activities.

Q. Could you name one or two of them?—A. Well, I am on the Board of the Red Cross—the Executive Board.

I am on the Executive Board of the Community War Fund. I was just appointed one of nine men to carry on from here in the next year in the Community War Fund.

I am on the Board of the Police Boys' Club. I acted as the Chairman of our campaign for funds two years ago. They told me that I raised the largest amount of money for the Police Boys' Club in its history. It made me very happy. Of course, I attended many of the functions of the Police Boys' Club from time to time with the underprivileged youngsters.

Q. Are you connected with the Community Chest, Mr. Dulcan?—A. Yes, sir; I served as a member of the Board of the Community Chest. At this time it is a sort of Board in the Community War Fund in which I am at present serving.

As far as the Red Cross is concerned I just instructed that a questionnaire be sent through the store asking for
1041 volunteers on blood bank. I have not the results on that, but I am told it is very good.

Mr. HORSKY. That is all, Your Honor.

Mr. DULCAN. Thank you.

Mr. AUSTIN. No cross-examination.

Mr. HORSKY. The defendant rests with that witness.

The COURT. Have you anything further?

Mr. JAMES. Yes, sir; may we have a moment? I think we have a little bit more at this time.

May it please the Court, at this time we would like, for the purposes of the record, to renew our motion to strike out testimony offered by the defendant bearing on the evidence of good faith and attempts to comply.

Of course, this motion does not include any evidence. It does not include any evidence which tends to show the absence of violations or contradictory claims of violation, and I make it at this time because it bears on what we will offer to show in rebuttal.

The COURT It would be appropriate to let the ruling on that matter stay as is.

Mr. JAMES. In view of Your Honor's reservation in ruling decision on that motion; then, the plaintiff proposes to offer some evidence in rebuttal which, we claim, bears on the claim of good faith.

1042 The COURT. You may do that without jeopardizing your position.

Mr. JAMES. Thank you, Your Honor. That is what I had in mind.

Now as to this, I have just asked Mr. Etelson about some records and he very kindly has sent someone over to the store. I think we can go some little distance, anyway, before we come to the necessity of the records, but if that necessity should arise, then I should crave Your Honor's indulgence for a few moments.

The COURT. Yes; I will see that you have the necessary records.

Mr. JAMES. Will you call Mr. Jack Cohen?

The CLERK. Who is that?

Mr. JAMES. Mr. Jack Cohen.

JACK W. COHEN, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. JAMES:

Q. What is your full name?—A. Jack W. Cohen.

Q. Where do you live, Mr. Cohen?—A. Maryland.

1043 Q. And by whom are you employed?—A. Rent Department of the OPA.

Q. Now did you and your wife have occasion to order a set of dishes from the Hecht Company some time during the past few months?—A. Yes; we had occasion to order a set of Russel-Wright dishes in December.

Q. And can you specify what kind of dishes these are?—A. These are Russel-Wright dishes called the "Modern American."

Q. Who makes them?—A. I believe that they are made by the Steubenville Pottery Company for Russel-Wright, but Russel-Wright's name is on the dishes.

Q. What quantity of dishes did you make?—A. A set of service for eight containing 50 dishes, and in addition to the set we order the sugar and creamer.

Q. How did your wife order this?—A. She ordered it by mail. She wrote them a letter.

Q. Did you see the letter?—A. Yes; I did.

Q. And how did it order it?—A. Well, the contents of the letter briefly were this: she requested a set of Russel-Wright
1044 dishes made by so and so to be sent to so and so in New York City. The set of eight was to contain—the set of service eight was to contain the itemized pieces, and she itemized every single piece; gave the color in every single case—I believe there were two colors involved—gave the color of the two pieces that were to come besides the set, and then gave the price she was going to pay, and she put down $16.95 for the service of eight which she knew she had paid before for that other set of dishes.

Q. That other set of dishes was not gotten from Hecht's, though—A. No; it was not, but it is a standard-priced item.

Q. How was that to be paid for?—A. That was on my charge account.

Q. You have a charge account?—A. Yes; I have a charge account with Hecht.

Q. What next happened with respect to those dishes?—A. I presumed they were sent to New York and I did not hear about them until I had a long-distance telephone conversation from the party to whom the dishes were sent, and they indicated that some of the dishes had been broken, and we said that was perfectly all right—that the dishes were insured.

I presume it was a service for eight. A few days later I called the Hecht Company by phone. I wanted to order
1045 a few extra items like a salt and pepper shaker which were not part of the set, and I inquired as to the cost of dishes so far. I wanted to know how far I was to go into the expenditures.

Q. Didn't you also want to take up the matter of broken dishes? I know that is a leading question.—A. Yes; and they also said if we sent them a description of the dishes that were broken they would gladly replace them.

Q. Now what did they say the charge was for that set of 50 dishes?—A. They told me it was $19.

Mr. HORSKY. Your Honor, I object to this line of questioning. This case was submitted to us on a bill of particulars before the trial began, and in the order of the Judge setting the case for trial the statement was made that the evidence would be limited to the particulars specified in the documents we were given. This was not included in those documents.

I don't know what is going to develop, but we may go on for another case if this type of testimony is to be admitted, and I think we ought to object to it.

Mr. JAMES. May it please Your Honor, what my brother

Horsky is saying is correct. By the way, our evidence
1046 is limited to this single violation. There is no collateral violation save this one.

We claim this not as one of the violations that we are counting on as a basis for the injunction, but rather as tending to rebut the evidence of good faith of the defendant. We claim here there is a subsequent violation, and if we have to go into good faith, it is then relevant as a rebuttal.

The COURT. Obviously they have not been informed of this and they had no opportunity to make any investigation of the facts.

Mr. JAMES. Mr. Etelson has. The attorneys have not—that is true.

Mr. GORDON. We have not been given any particulars of this as we have in the others. As far as I know, you gentlemen have not told me anything about this. Maybe I am wrong, but I do not think so. I did not even know this man was going to be called. I don't know yet what you are talking about, except that it is a new case.

Mr. JAMES. That is perfectly true.

Mr. GORDON. That is the way it seems to us, Your Honor—that you are starting the case over again.

The COURT. It seems to me that the defendants should have an opportunity to know the facts of this case, the answer to which is brought out, so obviously there are
1047 other stories told by this witness. I think I shall sustain the objection.

Mr. JAMES. May it appear on the record that we are offering to prove through this witness and a subsequent witness a violation subsequent to the time of the Temporary Restraining Order, and we limit our offer for the sole purpose of tending to rebut the claim of good faith which the defendant has offered in its case in chief; and may I have an exception?

The COURT. Yes; you may have an exception.

Mr. JAMES. The plaintiff rests, Your Honor.

The COURT. Plaintiff rests?

Mr. JAMES. Yes.

Witness excused.

* * * * *

MEMORANDUM

The complaint recites that in the judgment of the Price Administrator the defendant has engaged in actions and practices which constitute a violation of Section 4 (a) of the Emergency Price Control Act of 1942 (Pub. L. 421, 77th Congress 2nd Ses-

sion, C–26) hereinafter called the Act, in that it has violated the General Maximum Price Regulation, as amended, hereinafter referred to as the Regulation, issued pursuant to Section 2 (a) of the Act; and, therefore pursuant to Section 205 (a) of the Act, the Price Administrator brings this action to enforce Section 4 (a) of said Act and the Regulation.

The defendant is and has at all times mentioned herein been engaged in the sale and delivery of commodities in the retail mercantile business within the District of Columbia.

Pursuant to the provisions of Section 2 (a) of the Act, the Price Administrator published in the Federal Register the General Maximum Price Regulation, effective May 11, 1942 (7 F. R. 3152).

1166 The General Maximum Price Regulation, insofar as the same is material here, provides in substance:

(a) That on and after the effective date of the Regulation no person shall sell or deliver any commodity at a price higher than the maximum price permitted by the Regulation (Section 1499.1).

(b) That the seller's maximum price for any commodity shall be the highest price charged by the seller in March 1942 for the same or similar commodity (Section 1499.2).

(c) That the seller's maximum price for any commodity which cannot be determined as aforementioned (b) shall be determined by dividing the maximum price of the commodity by the replacement cost of the commodity, the percentage so obtained to be multiplied by the cost to him of the commodity being priced, and within 10 days after determining such maximum price, the seller shall report said price to the Office of Price Administration upon a form duly filled out (Section 1499.3).

(d) Sellers of commodities subject to maximum prices shall preserve for examination all their existing records relating to the price which they charged for such commodities during March, 1942, and shall prepare on or before July 1, 1942, on the basis of all available information and records and thereafter keep for examination by any person a statement showing the highest price he charged during March, 1942, for those commodities sold and delivered or offered for sale or delivery during said month with an appropriate description or identification of each such commodity (Section 1499.11).

1167 (e) Every person selling commodities, the maximum prices of which are set by the regulation, shall keep records showing as precisely as possible the basis on which he determined the maximum prices for those commodities (Section 1499.12).

(f) Every person offering to sell cost-of-living commodities at retail shall plainly mark in a manner visible to the purchaser the maximum price of such commodity and shall designate such price as the maximum or ceiling price (Section 14.99.13).

Plaintiff says that the defendant company has violated the provisions of the General Maximum Price Regulation in the following particulars, to-wit:

(a) Defendant has failed, neglected and refused to use the standards and methods provided in Sections 1499.2 and 1499.3 of the Regulation to determine the maximum prices on commodities sold or delivered, or offered for sale or delivery, by it since May 18, 1942, which said maximum prices so determined were in excess of the maximum prices permitted by the Regulation.

(b) Defendant posted as its maximum prices on cost-of-living commodities offered for sale at retail by it after May 18, 1942, prices in excess of the maximum prices permitted by the Regulation (Section 1499.13).

(c) That since May 18, 1942, the defendant has sold or delivered, or offered for sale or delivery, commodities subject to the General Maximum Price Regulation at prices in excess of the maximum prices permitted by the Regulation (Section 1499.1).

1168. (d) That the defendant did not on or before July 1, 1942, prepare and keep for examination by any person during ordinary business hours a statement in accordance with the Regulation (Section 1499.11 [b1 and b2]).

(e) That the defendant, though continuously engaged in the retail sale and delivery of commodities subject to the Regulation, has failed, neglected and refused to keep current records in conformity with the provisions of Section 1499.12 of said Regulation.

(f) That the defendant, though continuously engaged in the retail sale and delivery of cost-of-living commodities subject to the Regulation, did not on or before July 1, 1942, prepare and file with the appropriate War Price and Rationing Board a statement, relating to said cost-of-living commodities, in conformity with Section 1499.13 of said Regulation.

(g) That the defendant, though continuously engaged in the retail sale and delivery of cost-of-living commodities subject to the Regulation, has failed, refused and neglected to keep its statement, relating to said cost-of-living commodities, up to date in conformity with the provisions of Section 1499.13 of said Regulation.

The Price Administrator seeks an injunction enjoining the defendant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with the defendant from:

(1) Selling, delivering, or offering for sale or delivery, any commodity in violation of The General Maximum Price Regulation as heretofore or hereafter amended and attempting or agreeing to anything in violation thereof or in violation of any regulation adopted pursuant to said Section 2 (a) establishing maximum prices for said commodities; and

1169

(2) Failing to keep complete and accurate records for inspection by the Office of Price Administration as required by said General Maximum Price Regulation as heretofore or hereafter amended, or by any other regulation adopted pursuant to Section 201 (c) of the Act requiring the making or keeping of records or the making of reports.

The requirements of the Act and regulation are recent. The defendant company found it necesary to learn and understand the requirements of the act and the regulation and to plan and organize for compliance from and after the effective date. The opportunity to so prepare was meagre and the time allowed for compliance was brief. Violations occurred but I do not consider them numerous in view of the difficulties involved in defendant's efforts to comply with the act and regulation. The defendant company is a large retail establishment organized in seventy-five departments under the direct supervision of buyers and merchandise managers; its volume of business is approximately twenty million dollars per year; its employees range in number between nineteen hundred and two thousand; its inventory of January 30, 1942, showed an excess of one million two hundred thousand items of merchandise; it had between January 1, 1942, and November 1, 1942, some fifty-four thousand and thirty transactions; a transaction includes any number of items bought by a customer at the time of the transaction.

The defendant took timely, positive and vigorous measures to understand the requirements and to meet them. It set up a capable organization with an unlimited expense account, charged with the duty of directing and supervising the personnel in an honest and sincere effort to comply in full measure with the requirements of the act and regulation.

1170

Certain it is that violations occurred, but I do not find that the defendant company is chargeable with bad faith or of dis-

loyal motive or purpose. It is not charged that the defendant was wilful in its violations and I think it appropriate to say that the element of wilfulness is entirely lacking in the evidence.

There is little if any disagreement as to the facts. I think the requirements as applied to the conduct of defendant's business were somewhat complicated. The defendant company made prompt and reasonable efforts to meet the requirements, and yet violations occurred. As I view the evidence such violations were the result of errors in interpreting the act and the regulation and in applying same to the transactions of the defendant company. Some of the violations may have resulted from negligence or carelessness but I find them innocent in character. No inference of intentional wrong doing may be drawn from them. It may be said to the credit of the defendant company that all errors and mistakes were promptly corrected as soon as they were discovered. It should also be added that the defendant has consistently improved its methods and its records to more fully meet the requirements of the act and regulation and to combat the difficulties which arise from the elements of human frailty.

The contending parties pitch their battle in the field of law. The act provides in part as follows:

"SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

1171 Counsel for plaintiff think the quoted language makes it mandatory for a court to issue an injunction when any violation is shown. Counsel for defendant insist that to so hold would tie the hands of the court, contrary to legislative intent. The legislative history of the act indicates that Congress intended and proposed that the courts shall have jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case, forseeing the exercise full equitable jurisdiction to the end that justice shall be done.

I am sure that Congress did not anticipate one hundred percent compliance. The act is a war measure and Congress right-

fully expected conscientious and thoughtful cooperation of loyal citizens. Punishment is provided for wilful violations but where violations are not accompanied by the element of wilfulness the Price Administrator may ask and have the powers of the court as an aid in his administration of the act. If in such circumstances an injunction is asked the court is not deprived of its inherent powers by calling it a statutory injunction. The court in such case retains its implied powers, exercised in a sound discretion. Judicial discretion in such case does not mean judicial duty, as the Price Administrator contends. A court of equity may not be divested of jurisdiction by implication. The general equity powers of a court remain unimpaired except where a statute is so rigid as to inhibit the application of equitable doctrines. As generally understood judicial discretion includes the propriety of granting appropriate
1172 relief. All roles in equity must necessarily be sufficiently elastic to do justice in the case under consideration. Courts of equity are not inquisitorial but remedial.

In support of an application for statutory injunction it is not necessary to show that irreparable injury will result nor is it necessary to negative an adequate remedy at law. In other respects each case must be determined upon its facts and on equitable principles. In a case such as this an injunction should not issue unless thereby better compliance with law may be enforced. Such consideration is addressed to the sound discretion of the court. In such case, where violations of law were not flagrant and occurred despite reasonable effort to comply with the law, the court should consider upon the facts of a particular case whether there is reason to anticipate further violations. In the legislation here involved it was not the purpose of Congress to police industry but to seek compliance for the public good and to recognize honest and true efforts to meet the requirements of the law. It is elementary that the purpose of an injunction is to deter rather than to punish. In the circumstances of this case I do not find that there is reason to apprehend future violations of the act and regulation. The attitude of the defendant company is not antagonistic but cooperative, and in my judgment an injunction would not be in the public interest.

There is manifestation of good faith by the defendant,
1173 and I find no likelihood of further violation by it. I conclude that a just result requires a dismissal of plaintiff's complaint. There is abundant support in the authorities

for the view which I have taken of the law which controls the case.[1]

Counsel for defendant will submit for settlement appropriate findings and a suitable form for final order.

F. DICKINSON LETTS, *Justice.*

1174 [Endorsed:] Filed March 12, 1943
[Title omitted.]

FINDINGS OF FACT

1. Leon Henderson, the original plaintiff, was the Price Administrator. During the progress of the trial he resigned, and Prentiss M. Brown, his successor in that office, was substituted as plaintiff.

2. Defendant corporation operates a large department store in Washington, D. C. The store enjoys an excellent reputation, and its business has grown from a volume of about $500,000 in 1894 to about $20,000,000 in 1942.

3. The Emergency Price Control Act was approved January 30, 1942, and, prior to the promulgation of the General Maximum Price Regulation the application of which is involved in these proceedings, The Hecht Company had already taken steps to prepare itself for compliance with whatever price control regulations might be issued. One of its executives had gone to Canada to study and report on the Canadian system

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[1] *Fleming* v. *Lincoln Looseleaf Warehouse Company*, 5 Wage Hour Reporter 615 (E. D. Tenn., 1942).

Fleming v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940).

Fleming v. *National Bank of Commerce*, 41 F. Supp. 833 (S. D. W. Va. 1941).

Fleming v. *Kull*, 4 Wage Hour Reported 411 (E. D. Tex. 1941).

Walling v. *Woodruff*, 6 Labor Cases par. 61, 235 (M. D. Ga. 1942).

Henderson v. *Sonken-Calamba Corporation*, 1 Price Control Cases, par. 50, 901 (W. D. Mo., June 1, 1942).

Securities and Exchange Commission v. *Lawson*, 24 F. Supp. 360 (D. Md. 1938).

Fleming v. *Jacksonville Paper Company*, 128 F. (2d) 395 (C. C. A. 5th, 1942).

National Labor Relations Board v. *Ford Motor Company*, 119 F. (2d) 326 (C. C. A. 5th, 1941).

Walling v. *Builders' Veneer and Woodwork Co.*, 45 F. Supp. 808 (E. D. Wis. 1942).

National Labor Relations Board v. *Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7th, 1939).

of price control. The Hecht Company had created a new section known as the Price Control Office with office space set aside within the store which was to be devoted entirely to price control. This was headed by Mr. Robert Levi, a well
1175 educated and well trained employee who had a wide knowledge of the operation of the store. Mr. Levi was told to employ such persons as were necessary and was given an unlimited budget. He organized his section and assumed the direction of compliance with certain price regulations relating to nylon hose, household mechanical refrigerators, and household vacuum cleaners which had been put in effect prior to the promulgation of the General Maximum Price Control Regulation.

4. Prior to the promulgation of the General Maximum Price Control Regulation, The Hecht Company had also made evident its desire to cooperate with the Office of Price Administration. Its store was made available to members of the staff of the Office of Price Administration on numerous occasions, and Mr. Dulcan, the general manager, proffered the store and its personnel as a testing or proving ground or laboratory, in which the Office of Price Administration might check or experiment with any regulation which might be issued. The Hecht Company staff prepared drawings which were used as illustrations in a bulletin later issued by the Office of Price Administration.

5. General Maximum Price Regulation, promulgated by the Price Administrator, was dated April 28, 1942, was published in the Federal Register April 30, 1942, and was to become effective as to manufacturers on May 11, and as to retailers on May 18, 1942. It provided that a seller's maximum price for any commodity should be, in those cases in which the seller dealt in the same or similar commodities during March 1942, the highest price charged by the seller during March 1942 for the same commodity, or if no charge was made for the same commodity, for the similar commodity most nearly like it,
1176 and in those cases in which the seller did not deal in the same or similar commodities during March 1942 the highest price charged during that month by the most closely competitive seller of the same class for the same commodity, or if no charge was made for the same commodity for the similar commodity most nearly like it. It was provided that for the purpose of the regulation the highest price charged by a seller during March 1942 should be the highest price which the seller charged for a commodity delivered by him during March 1942, or if the seller made no such delivery during March 1942, his highest offering price for delivery during that month. It was

provided that in cases where the same or similar commodities had not been sold by the seller or by his competitors the seller's maximum price should be determined by the seller selecting from the same general classification and price range as the commodity being priced the comparable commodity for which the seller could establish a price and of which the seller delivered the largest number of units during March 1942, that the seller should divide his maximum price for that commodity by his replacement cost of that commodity, and should multiply the percentage so obtained by the cost to him of the commodity being priced, and that the resulting figure should be the maximum price of the commodity being priced. The regulation also provided that a seller should preserve existing records relating to prices for commodities delivered during March 1942, and offering prices during that month, that he should prepare prior to July 1, 1942, and thereafter keep for examination, a statement showing the highest prices charged for commodities delivered during March 1942 and offering prices for delivery during that month together with an appropriate description or
1177 identification of each such commodity; and that he should keep records relating to the prices charged for commodities sold after the effective date of the regulations and records showing the basis on which he determined maximum prices for those commodities. The regulation also provided that in the case of certain commodities designated as cost-of-living commodities and listed in an appendix to the regulation every seller should on and after May 18, 1942, mark the maximum price of such commodity on the commodity or post such price in the store, and that lists of such commodities with the maximum selling price and with appropriate descriptions should be filed in the Office of Price Administration on or before June 1, 1942, and thereafter kept up to date by monthly supplements.

6. Mr. Levi secured an advance copy of General Maximum Price Regulation, several days before it was formally published, and immediately mapped out and put in effect a series of moves to bring The Hecht Company into compliance. This work had to be done rapidly because of the limited period of time after April 28, 1942, the date of the promulgation of the General Maximum Price Regulation and before May 18, 1942, the date on which the maximum prices were to become effective and the posting made, and before June 1, 1942, when the list of cost-of-living commodities was to be filed. The Washington store of The Hecht Company contained 107 selling departments, each of which was in effect a small store. The head of each department was called a "buyer", some of whom had charge

of more than one department. It was the duty of the
1178 buyer to order the goods for his department, to price them, to sell them, and generally to manage the department. The primary responsibility for compliance with the various aspects of the regulations was placed on the buyers in the various departments. This was the only course that could have been followed, since only the buyers were sufficiently well acquainted with the stock and the operation of their departments to be able to determine what deliveries had been made in March, 1942, and at what prices, and to compare the articles on hand with the articles delivered in March. To insure that the buyers accepted and fulfilled the responsibility thus imposed upon them, Mr. Levi interpreted the regulations and applied them to the particular problems of the store, prepared and distributed memoranda and forms, conducted frequent meetings of the buyers, answered questions, and in general made the buyers aware of what had to be done to comply with the regulations and kept track of their performance. Mr. Levi devoted all of his time to this work and he had seven assistants who devoted all of their time to it. He kept closely in touch with developments at the Office of Price Administration, and subscribed to a number of services which kept him informed of new regulations and interpretations. About June 20, 1942, Mr. Levi resigned to become an Ensign in the United States Coast Guard and his place was taken by Mr. Etelson who had been with the store for many years and was well qualified to carry on the work. Mr. Etelson had been prepared for the post by Mr. Levi for about a month before Mr. Levi left the store. From the time he replaced Mr. Levi, Mr. Etelson continued the program of educating and supervising the staff of The Hecht Company in order to insure compliance with the regulations of the Office of Price Administration.

1179 7. Notwithstanding the work of Mr. Levi and Mr. Etelson, the buyers made mistakes. The Washington store of The Hecht Company has approximately two thousand employees. Its inventory of January 30, 1942 showed an excess of one million two hundred thousand items of merchandise; it had between January 1, 1942 and November 1, 1942 some fifty-four thousand and thirty transactions in the furniture departments alone. A transaction includes any number of items bought by a customer at the time of the transaction. The application of the regulations to the pricing of a particular article often involved interpretation of the regulations as well as exact knowledge of the nature of the article, whether the same or similar articles had been delivered in March 1942, etc. The buyers were merchants who were not trained in such inter-

pretation. The correct pricing of the articles was made difficult by the novelty of the regulations, by the large volume of articles, by the fact that the comparisons were with deliveries two months before as to which it was often hard to find adequate records. The buyers were further confused, and the work of Mr. Levi and Mr. Etelson and the Price Control Office of the store was made much more difficult, by the fact that there were numerous other regulations of the Office of Price Administration, many of which in whole or in part were applicable to the store, and which were all different from General Maximum Price Regulation and many of which differed from each other in their method of determining prices, including regulations relating to summer seasonal commodities, women's, girls', and children's outwear garments, men's and boys' tailored clothing, women's fur garments, fall and winter seasonal commodities, bed springs, waterproof rubber footwear, 1180 stirrup pumps, phonograph records, paper products, corded yarn garments, and women's silk hosiery, and in addition were numerous amendments issued from time to time by the Office of Price Administration of not only the General Maximum Price Regulation but also of the other Maximum Price Regulations. Mistakes in pricing were caused by difficulties and delays in determining what articles had been delivered in March and at what prices, occasionally errors would be made because of human mistakes in listing, typing or copying, and in some instances the buyers permitted articles to be sold before the proper price had been established for them. In a few instances buyers erroneously believed that prices could be equalized so that items of the same value would not be sold at different prices. Mistakes were made in listing owing to the fact that some of the buyers misinterpreted the requirement for listing all items sold or delivered for sale in March, and listed only a representative selection of goods showing each price range, style and cost, but not each source or style number, and the same misunderstanding caused the omission of items newly received which were similar to items already listed. In one department a buyer, whose listing was otherwise quite complete, erroneously believed that slippers, play shoes, and rubbers were not cost-of-living commodities and that they did not have to be listed. These mistakes in pricing and listing were all made in good faith and without intent to violate the regulations. The performance of the store as to posting was excellent.

8. In the latter part of September 1942, the Office of Price Administration commenced an investigation which continued

for approximately six weeks and in which ten people
1181 took part from time to time. The Hecht Company gave the investigators every possible help, and made available for assistance to the investigators its own personnel, including Mr. Etelson, the Price Control Administrator of the store, and the buyers in the departments which were under investigation. The services of such people were quite largely utilized by the investigators. The investigation disclosed that buyers had made the mistakes set forth in the preceding paragraph. The complexity of the subject caused the investigators sent by the Office of Price Administration also to make numerous mistakes in their report.

9. The mistakes brought to light by the investigation were at once corrected, and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future. Mr. Etelson's staff was increased several times until it reached the number of twenty-eight employees who were engaged under his direction in seeing that the store complied with the regulations as to price control. New methods of control were instituted so that by early November 1942 the system was as follows: Copies of all orders for articles go to the store's price control office. If it is a reorder of an article already registered at the price control office the buyer must put on the copy in green ink the page and line number at which the article is registered in the ceiling price book. If the order is for a new article the order must have attached to it a form supplied by the store which indicates the basis of the comparison in accordance with the procedure outlined in paragraph 5, *supra*, or the method of establishing the ceiling price for the new item if it is covered by a regulation other than the General Maximum Price Regulation. The price control office checks the form to see that it is
1182 properly filled out, that the article upon which the comparison is based is listed, and at the price as indicated on the form, and that the comparison appears to be a proper one. Where goods are ordered to be sold in the future and the price cannot be established at once the form is left blank, and a statement is attached that the goods must not be brought from the warehouse to the store until the buyer has been notified and a ceiling price established. After a copy of the order has gone through the price control office it goes to the invoice office to be held until the merchandise arrives. It is then matched against the merchandise, and the invoice office puts on the invoice in red ink the retail price and in green ink the ceiling price and then sends the form back to the price control office, thus showing that the goods have arrived and have been

priced. The invoice then goes to the markers, who make up the price tickets and put on them the retail and ceiling prices. The price tickets are then affixed to the items. No article can go on the floor of the store until all this has been done. Moreover, although the regulations provide that the ceiling price need be stated only on cost-of-living commodities the store is now putting the ceiling price on every article that comes in. The payroll of the price control office for the week ending December 19, 1942, had reached the sum of $853.00 for employees who devoted all their time to that work. Taking the proportion of the time of other employees which is devoted to this work the additional sum of $1,267.50 was expended at that time weekly by The Hecht Company in complying with the regulations.

10. It has always been the policy of The Hecht Company to give a customer credit for any overcharge which
1183 may have been discovered by the store, and The Hecht Company is making repayment of all overcharges brought to light by the investigation in case of customers who can be identified. The Company proposes to contribute to some local charity the amount of any such overcharges which cannot thus be allocated.

11. December 8, 1942, Leon Henderson, who was then the Price Administrator instituted this suit, asking that this defendant be enjoined from violating the General Maximum Price Regulation or any regulation adopted pursuant to the provisions of the statute establishing maximum prices or requiring the making or keeping of records or the making of reports. The defendant received no warning before the institution of the suit. There has never been any refusal by the store or any of its employees to comply with any orders or requests of the Office of Price Administration.

12. The defendant and its employees have attempted, in good faith, to comply with the act, and have taken vigorous steps to do so. The compliance thus resulting has been very substantial. Violations have occurred, but they have not been numerous in view of the difficulties involved in the defendant's efforts to comply. There were no wilful violations. Mistakes have been corrected as soon as discovered, and vigorous steps have been taken to insure against their happening again and to combat the difficulties which arise from human frailty. These acts have all been done voluntarily and at considerable expense, in a spirit of full cooperation with the Office of Price Administration and with its aims and policies. The
1184 defendant's system of control has been greatly improved, and no one has suggested to the defendant how its

present method of compliance can be made better. An injunction would have no effect by way of insuring better compliance in the future, and would be unjust to the defendant. An injunction would not be in the public interest.

March 12, 1943.

F. DICKINSON LETTS, *Justice.*

1185 [Endorsed:] Filed: Mar. 12, 1943.

[Title omitted.]

CONCLUSIONS OF LAW

1. Section 205 (a) of the Emergency Price Control Act of 1942 does not require this Court automatically to issue an injunction in any case where violations of the statute are shown or admitted.

2. The purpose of an injunction is to deter rather than to punish, and an injunction should not issue unless thereby better compliance with the law may be enforced. Each case must be measured and decided according to its own circumstances, and the Court may exercise its discretion in accordance with the equities of the case.

3. The complexity of the regulations and the difficulty of compliance are not in themselves defenses in this case, but may be considered in connection with other evidence bearing on the extent of the defendant's efforts to comply.

4. Where the defendant has made a determined effort to comply with the regulations issued under the Emergency Price Control Act of 1942, and where violations were the result of errors on the part of employees of the defendant made in
1186 good faith, and where the attitude of the defendant is not antagonistic but is cooperative, and where the defendant has improved its system of control so that the indication is that there will be no further violations except such as may be caused by human frailties, an injunction would be unjust to the defendant and would not be in the public interest and this court should decline to issue an injunction.

March 12, 1943.

F. DICKINSON LETTS, *Justice.*

1187 In the District Court of the United States for the District of Columbia

Civil Action No. 17995

PRENTISS M. BROWN, PRICE ADMINISTRATOR, PLAINTIFF, *vs.* THE HECHT COMPANY, DEFENDANT.

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER AND DISMISSING SUIT

This case came on to be heard, and it is by the Court this 12th day of March, 1943.

Adjudged and Ordered, That the temporary restraining order heretofore issued in the above entitled cause on December 8, 1942, be and the same is hereby dissolved, and it is

Further adjudged and Ordered, That the complaint in the above entitled cause be, and the same is hereby, finally dismissed.

F. DICKINSON LETTS, *Justice.*

[Endorsed:] Filed: March 12, 1943.

PLAINTIFF'S EXHIBIT 9

54–512

Date..... Dept. No.....

Mfg..... Confirmation No.....

Change in Retail ☐ Excess ☐ Ordered ☐ Samples ☐ Reinstate ☐ Orig. Sh. Date ☐ Cancellation Date ☐ Change in Date ☐

Remarks, Be brief but specific.....

Style	Quantity	Description	Cost	Retail on confirmation	To be retailed	Total	
						Cost	Retail

Signed.....

OK

Div. Mdse. Mgr..... Buyer..... Inv. Office.....

1205 PLAINTIFF'S EXHIBIT 3

BUYER'S AND MERCHANDISE MANAGER'S AFFIDAVIT

I, Ben Rose, being duly sworn, depose and say that I am the buyer of the Boys' Clothing Department, No. 26 of the Hecht Co., Washington D. C.

I, Philip Straus, being duly sworn, depose and say that I am the Merchandise Manager of the Boys' Clothing Department No. 26 of the Hecht Co., Washington D. C.

And that this list of maximum prices of "Cost of Living Commodities" required under the maximum price regulation was prepared under my supervision:

And that the information contained therein is accurate and correct to the best of my knowledge.

BEN ROSE,
Buyer.

P. C. STRAUS,
Merchandise Manager.

Sworn to before me this third day of June 1942.

ROSCOE W. REICHARD,
Notary.

1214 PLAINTIFF'S EXHIBIT 6

BOYS' CLOTHING

Dept. 26

Mdse. in Stock on Oct. 6, 1942, but Not on a Submitted Ceiling Price List

Manufacturer	Description	Style No.	Date on price ticket	Selling price	Manufacturer's No.
Kraft Barth	3 pcs. 65 Rep. 35 cotton.	6406	8-42	$22.50	
	3 pcs. 65 wool, 25 Rep. 9 hair.	3833	2-42	25.00	
Saffer	3 pcs. all wool	1513	1-42	22.50	
Weiner-Katz	2 pcs. covert, 70 wool, 30 reused.	5122	9-42	19.95	
Saffer	3 pcs. 100% wool	7901	9-42	35.00	
	3 pcs. 100% wool	7206	9-42	25.00	
	3 pcs. 100% wool	7060	9-41	32.50	
	3 pcs. 100% wool	7925	9-42	35.00	
Kittey Bros.	4 pcs. 100% wool	1760	9-41	37.50	
Saffer	4 pcs. 100% wool	5613	9-41	39.05	
Picorello & Singer	4 pcs. 100% wool	6704	4-42	39.95	
	3 pcs. 100% wool suit.	7910	9-42	25.00	

PLAINTIFF'S EXHIBIT 6—Continued

Manufacturer	Description	Style No.	Date on price ticket	Selling price	Manufacturer's No.
Weinert Katz	20 wool	2616		17. 55	266
	30 reused				
	45 cotton				
	2 piece				
	65 reprocessed	1616, 1916		17. 95	
	35 cotton	1416			
	50 wool	4318		18. 95	882
	50 reused wool				
	2 piece				
	60 wool	4354		18. 95	882
	40 reprocessed				
	20 wool	8233, 8239		18. 95	527
	25 reprocessed				
	22 reused				
	33 rayon				
Sol Duchovnay	28 wool	4527		18. 95	
	3 pants, 42 reprocessed.				
	30 reused				
	50 reprocessed			21. 00	
Sol Duchovnay	30 rayon				2854
	20 cotton				
Weinert Katz	2 piece	1818, 1118		15. 95	882
	50 wool				
	45½ reused				
	4½ other				
1215 Saffer	3 pcs. 100% wool suit.	5017	1–42	22. 50	
	3 pcs. 100% wool suit.	42505	11–41	25. 00	
	4 pcs. 100% wool suit.	7912	2–42	29. 75	
	3 pcs. 100% wool suit.	7214	9–42	25. 00	
Schneider, Hoffenberg & Mines.	4 pcs. 100% wool suit.	7924	2–42	29. 75	
	3 pcs. 100% wool suit.	5017		22. 50	
	3 pcs. 100% wool suit.	5026	1–42	22. 50	
Picorello & Singer	3 pcs. 100% wool suit.	7913	9–42	35. 00	
	3 pcs. 100% wool suit.	7925	9–42	35. 00	
Schneider, Hoffenberg, & Mines.	4 pcs. 100% wool suit.	7915	2–42	29. 75	
	3 pcs. 65 Rep. 35 Cotton.	6406	8–42	22, 50	
	3 pcs. 40 Rep. 30 Wool 30 Reused.	5212	8–41	22. 50	
	3 pcs. 2 trousers, 50 wool, 48 Reused; 2 other fibers.	8504	2–42	25. 00	
	3 pcs. 50 wool, 48 Reused.	1314	3–42	25. 00	

PLAINTIFF'S EXHIBIT 6—Continued

Manufacturer	Description	Style No.	Date on price ticket	Selling price	Manufacturer No.
Saffer	3 pcs. 100% wool	5628	4–42	32. 50	
Schneider, Hoffenberg, & Mines.	3 pcs. 65 wool, 26 rep. 9 hair.	6833	2–42	25. 00	
Saffer	4 pcs. 100% wool	6736	4–42	39. 95	
	3 pcs. 100% wool	7926	8–42	35. 00	
	3 pcs. 100% wool	7925	9–42	35. 00	
Picorello & Singer	3 pcs. 65 wool, 26 rep., 9 hair.	6835	2–42	25. 00	
	3 pcs. 100% wool	7932	2–42	25. 00	
	3 pcs. 100% wool	8981	2–42	32. 50	
Kraft Barth	3 pcs. 65 Rep. W. 35 cotton.	6400	8–42	22. 50	
	3 pcs. 65 Rep. W. 35 cotton.	6405	8–42	22. 50	
Wiener & Katz	4 pcs. 65 Rep. W. 35 cotton.	2215	9–41	23. 50	
Saffer	3 pcs. 100% wool	5020	11–41	22. 50	
	3 pcs. 100% wool	7930	8–42	35. 00	
	3 pcs. 100% wool	7912	8–42	35. 00	
	3 pcs. 100% wool	7926	8–42	35. 00	
	3 pcs. 65 wool, 25 rep., 9 hair 11–6.	6883	2–42	25. 00	
	3 pcs. 65 wool, 25 rep., 9 hair 11–6.	6835	2–42	25. 00	
Lewisohn	3 pcs. 2 trousers, 50 wool 50 rep.	6336	9–42	25. 00	
Saffer	4 pcs. 100% wool	6736	4–42	39. 95	
	3 pcs. 100% wool	706	9–41	32. 50	
	4 pcs. 100% wool	1760	9–41	37. 50	
Kittey	4 pcs. 100% wool	5631	9–41	39. 95	
Saffer	3 pcs. 100% wool	7210	9–42	25. 00	
Kraft Barth	3 pcs. 65 Rep., 35 cotton.	6402	9–42	19. 95	
Saffer	3 pcs. 100% wool	7912	8–42	35. 00	
	2 pcs. 50 wool, 50 Reused.	6317	8–42	21. 00	
	2 pcs. 50 wool, 50 Reused.	6319	8–42	21. 00	
	3 pcs. 65 wool, 26 rep., 9 hair.	6835	2–42	25. 00	
1216 #882	2 piece tweed	4364		18. 95	
	60% wool				
	40% reprocessed wool				
#882	2 piece tweed	4317		18. 95	
	50% wool				
	50% reused wool				
A. S. Bivsh	2 Knickers	5101		11. 95	
	12½ wool				
	37½ reused				
	50% rayon				
Draft Barth	Stout—2 piece	6404		17. 95	
	long suit	6405			
	65% reprocessed				
	35% cotton				

PLAINTIFF'S EXHIBIT 6—Continued

Manufacturer	Description	Style No.	Date on price ticket	Selling price	Manufacturer's No.
Kraft Barth	Stocky Knicker	6405		14. 95	
	Suit	6400			
	65% reprocessed				
	35% cotton				
Schneiderman	Jr. Rugby Suit	1727		11. 95	
	1 pair longies	1728			
	50% wool				
	48% reused				
	2% other fibers				
Schneiderman	Jr. Rugby Suit	1602		10. 95	
	1 pair knickers	1606			
	65% wool, 35 cotton	1605			
	60% reprocessed wool	1640			
	40% rayon	1608			
Kraft Barth	Stocky	6407		16. 95	
	2 piece longie	6404			
	Suit	6400			
	65% reprocessed	6402			
	35% cotton				

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PLAINTIFF'S EXHIBIT 7

Dept. 26

Mark Ups

Date	Class	Quantity	Description	Present retail price	Proposed retail price
2-9, 4-14-42	G	8	Coats	$14. 88	$16. 95
	H	5	Palm Beach Eton	4. 95	5. 95
	H	33	Palm Beach Rugby	5. 40	6. 95
	D	6	Palm Beach Cadet	9. 95	10. 95
	D	3	Palm Beach Cadet	9. 95	11. 95
	D	50	Palm Beach Student	12. 95	16. 95
2-10, 4-15-42	F	65	2 Golf Suit	10. 95	11. 95
	F	26	2 Golf Suit	12. 95	13. 95
	F	21	2 Golf Suit	14. 95	15. 95
	F	14	Golf Suit	11. 95	12. 95
	D	21	Cadet	16. 95	17. 95
2-11, 4-15-42	A	37	Student Suit	22. 50	25. 00
	A	23	Student Suit	27. 50	29. 75
4-2, 4-17-42	J	75	Gaberdine Slacks	4. 50	4. 99
4-2, 4-30-42	J	156	Gaberdine Slacks	7. 50	7. 95
3-2, 5-11-42	R	21	Camel Hair Topcoat	25. 00	26. 50
3-2, 5-11-42	R	9	Covert Top Coat	25. 00	26. 50
5-2, 5-22-42	T	30	Sport Coats	13. 88	14. 95
5-2, 6-1-42		10	Sport Coats	13. 95	14. 95
5-6, 6-8-42	T	6	Sport Coats	13. 95	14. 95

PLAINTIFF'S EXHIBIT 8

STUDENTS' CLOTHES

Dept. 26

Confirmations Used by Buyer, Mr. Rose, Which Establish Ceiling Price of Merchandise

Style No.	Manufacturer	Description	Confirmation No.	Class	Purchased	Received	Cost	Retail	Ceiling Price List
6835	Schneider, Hoffenberg & Mines.	3 Piece Students' Suits.	8555		1-30-42			$22.50	$26.50
33	Schneider, Hoffenberg & Mines.	3 Piece Students' Suits.	8555		1-30-42			22.50	26.50
7932	Schneider, Hoffenberg & Mines.	3 Piece Students' Suits.	8555		1-30-42			22.50	26.50
7902	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7924	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7933	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
27	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7925	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7804	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7969	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7917	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
7705	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75
03	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42			27.50	29.75

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7912	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42				27.50	29.75
15-8110	Schneider, Hoffenberg & Mines.	4 Piece Students' Suits.	8555		1-30-42				27.50	29.75
3412	Schneider, Hoffenberg & Mines.	Students' Fleece Coats.	10327	P	2-3-42	2-6-42		$13.50	22.50	25.00
5706	Schneider, Hoffenberg & Mines.	Students' Fleece Coats.	10327	P	2-3-42	2-6-42		13.50	22.50	25.00
3410	Schneider, Hoffenberg & Mines.	Students' Fleece Coats.	10327	P	2-3-42	2-6-42		13.50	22.50	25.00
5305	Schneider, Hoffenberg & Mines.	Students' Fleece Coats.	10327	P	2-3-42	2-6-42		9.50	16.95	17.95
5524	Schneider, Hoffenberg & Mines.	Fleece School Coats		O	1-28-42			8.75	15.95	17.95
21	Schneider, Hoffenberg & Mines.	Fleece School Coats		O	1-28-42			8.75	15.95	17.95
22	Schneider, Hoffenberg & Mines.	Fleece School Coats		O	1-28-42			8.75	15.95	17.95
23	Schneider, Hoffenberg & Mines.	Fleece School Coats		O	1-28-42			8.75	15.95	17.95
3351	Schneider, Hoffenberg & Mines.	Fleece School Coats		O	1-28-42			8.75	15.95	17.95
5516	Weinert Katz	Big Fellow Suits		B				10.25	17.95	18.95
6218	Weinert Katz	Big Fellow Suits		B				10.75	17.95	18.95
6400	Louis Saffer	1-Pant Plaid	11606B		10-20-41	2-1-42		15.50	25.00	27.50
1408	Friedman's Bros. D. B.	Rugby K. S	41223	G	1-9-42	3-19, 20 & 24-42		7.25	10.95	11.95
14-29	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42		3.75	5.99	6.95
33	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42		3.75	5.99	6.95
9	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42		3.75	5.99	6.95
22	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42		3.75	5.99	6.95
44	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42		3.75	5.99	6.95

PLAINTIFF'S EXHIBIT 8—Continued

Style No.	Manufacturer	Description	Confirmation No.	Class	Purchased	Received	Cost	Retail	Ceiling Price List
28	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42	3.75	5.99	6.95
21	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42	3.75	5.99	6.95
43	Adler Pants Company	Imported Tweed Slacks.	8572		1-29-42	7-6-42	3.75	5.99	6.95
4106	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12 & 3/18-27.	6.37	10.95	11.95
4103	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12 & 3/18-27.	6.37	10.95	11.95
4102	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12 & 3/18-27.	6.37	10.95	11.95
1219									
5110	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12, 3/18-27	6.37	10.95	11.95
5101	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12, 3/18-27	6.37	10.95	11.95
5123	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12, 3/18-27	6.37	10.95	11.95
5102	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12, 3/18-27	6.37	10.95	11.95
5105	A. S. Birsh	S. B. 2 Golf	11616B		11-1-41	2/26, 3/12, 3/18-27	6.37	10.95	11.95
4106	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
4103	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
4102	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
5110	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
5101	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
5123	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
5102	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
5105	A. S. Birsh	D. B. 2 Golf	11615		11-1-41	1/30, 3/28, 1942			
8192	A. S. Birsh	D. B. 2 Golf—dark blue.	11615		11-1-41	1/30, 3/28, 1942			

	Delux Wash Suit Company.	Stocky Slack Sets	01828B	5-27-42	6-24-42	3.95	4.50
100	Endel Pants Company	Wash Slacks	8693A	4-8-42	5/12, 5/27	1.95	1.99
*5303	Kraft Barth	Students' Sport Coats.	41169B	4-28-42	5/6, 5/8, 5/11, 5/14 8.75	13.88	13.95
*5406	Kraft Barth	Students' Sport Coats.	41169B	4-28-42	5/6, 5/8, 5/11, 5/14 9.25	13.88	13.95
*4304	Kraft Barth	S. B. 2 G'lf Husky	48314B	11-6-41	2/20, 2/24	17.95	18.19
*4301	Kraft Barth	S. B. 2 G'lf Husky	48314B	11-6-41	2/20, 2/24		
*4303	Kraft Barth	S. B. 2 G'lf Husky	48314B	11-6-41	2/20, 2/24		
4417	Kraft Barth	D. B. 2 Golf—Long	48314B	11-6-41	2/20, 2/24	17.95	18.95
*1153	M. Nirchberg Sons	Slack Sets	25210B	1-2-42	5-6-42	3.95	3.99
6404	Louis Saffer Company	Walker 1 p. g.—Long.	11608B	11-1-41	1-20-42	25.00	27.50
6650	Wearbest Coat Company	Camel Coats—Long.	8562-1A	6-29-41	3-31-42	25.00	26.50
9104	Louis Saffer Company	Gabardine 3 Pc. C. V. P. Suits.	10334		2-4-42	27.50	28.50
9105	Louis Saffer Company	Gabardine 2 Pc. Suits.				25.00	26.50
*1800	Wearbest Coat Company.	Fleece-Lined Coats	44763	10-11-41	9-15-41	27.50	28.50
01							
02							
03							
*1801	Wearbest Coat Company.	Fleece Coats	44763	10/1/41	10-2-41	26.50	28.50
03							
06							
09							
11							
1220							
6600	Wearbest Coat Company.	Coverts	44763	1-28-42		25.00	26.50

See footnote at end of table.

PLAINTIFF'S EXHIBIT 8—Continued

Style No.	Manufacturer	Description	Confirmation No.	Class	Purchased	Received	Cost	Retail	Ceiling Price List
6500	Wearbest Coat Company.	Coverts	44763		1-28-42			$25.00	$26.50
	Sanders A. Levinahn		06661		3-25-42	3-27-42		21.00	21.50
	Sol Duhavney	2 Golf	10473		3-23-42	3-25-42		14.95	15.95
	Sol Duhavney	Long Golf	10473		3-23-42	3-25-42		14.95	15.95
	Solzberg Hat Company.	Students' Hats	10453		2-1-42	2-1-42		3.75	3.95
1500	Arboz Pants Company.	2 Knicker Suits—Long Golf.	11619		11-1-41	2-1-42		8.98	9.95
01									
03									
04									
06									
08									
5320	Kraft Barth	Sport Coats	41169		4-28-42	4-30-42		13.88	14.95
22									
08									
06									
8192	A. S. Birsh	Golf—Long	11611		11-1-41	2-42		13.95	14.95
5600	Weinert Katz	2 Pants—Long	8560		2-29-42	2-42		17.95	18.95
TR516	Picarrello & Singer	Covert 3 Pc C. V. P.	47608		11-41	2-42		14.95	16.95

*Items indicated by asterisk are lined out on orginal.

1221 PLAINTIFF'S EXHIBIT 38

BUYER'S AND MERCHANDISE MANAGER'S AFFIDAVIT

I, Jean Rothenberg, being duly sworn, depose and say that I am the buyer of the Hosiery Department, No. 47 of the Hecht Co., Washington, D. C.

I, Harry Weisman, being duly sworn, depose and say that I am the Merchandise Manager of the Hosiery Department No. 47 of the Hecht Co., Washington, D. C.

And that this list of maximum prices of "Cost of Living Commodities" required under the maximum price regulation was prepared under my supervision:

And that the information contained therein is accurate and correct to the best of my knowledge.

JEAN ROTHENBERG,
Buyer.

HARRY WEISMAN,
Merchandise Manager.

Sworn to before me this Third day of June 1942.

ROSCOE W. REICHARD,
Notary.

1225 PLAINTIFF'S EXHIBIT 39

Dept. 47 WOMEN'S HOSIERY

Mdse. in Stock and Offered for Sale in the Store on 10-8-42 Which Was Not on Ceiling Price List Submitted to OPA as Required Under the GMPR

Manufacturer	Description	Style No.	Price	Date
National Hosiery	Individual Ft. Rayon 51 gauge, 75 denier.	"Round the Clock."	$1.35	
Kayser	Rayon & Cotton ft. plain top 100 denier.	110	1.25	
Artplus Hess, Taylor, & Kreiss.	7 thread, all silk, rayon top.	745	1.65	
Phoenix	100 denier Rayon	312	1.00	
Cannon	51 gauge, 50 denier Rayon.	551	1.35	
Phoenix	100 denier, Rayon	317	1.00	
Van Raalte	Bemberg Rayon, 51 gauge 50 denier.	V50	1.35	
Van Raalte	100 denier, 42 gauge rayon.	V100	1.00	
Van Raalte	12 thread silk Cotton top.	V10	1.50	
Mamouth Hosiery	Lace Nylon		2.95	

PLAINTIFF'S EXHIBIT 39—Continued

Manufacturer	Description	Style No.	Price	Date
Mamouth Hosiery	Lace Silk	389	$1. 95	
Jobber	All silk, 2 thread	200	1. 50	3–2
Le Boz	Rayon lace	400M	1. 15	
Phil Rheingold	Apex—4 thread, 45 gauge silk, Rayon top.	450	1. 65	
Phil Rheingold	Apex—3 thread, 45 gauge, silk Rayon top.	348	1. 65	
Phil Rheingold	Runproof Rayon, 100 denier,	1400	1. 50	
Beth Ayers	Never run-rayon, 75 denier.	796	1. 50	
Denita	4 thread, 42 gauge silk with rayon top.	82	1. 15	
1226 Phoenix	Irregular, 20 denier 66 gauge Nylon.		2. 25	
Berkshire	100 denier extra long rayon.		1. 15	
Kayser	Fit all top—Rayon Rayon & cotton top.	217	1. 25	
Berkshire	Kantrun rayon, 75 denier.		1. 50	
L. Weil	100 denier, 42 gauge	435	1. 00	
Phoenix	Extra size—rayon 100 denier.	303	1. 15	
Clen Raven	Nylon & rayon (white)	1095	1. 50	
Berkshire	Rayon Mesh, 150 denier		1. 35	
Lyroming	Lace Nylon	Prestige	2. 95	
Van Raalte	Sportling 53 cotton 26 wool 21 rayon.		1. 35	
Phoenix	Nylon & lisle mixture		1. 35	
G. Edelstein	Bryn Mawr-English lisle	908	1. 50	2–2
Phoenix	Fine mesh lisle	347	1. 65	
Phoenix	Spider weave mesh	357	1. 15	
Northmont	Extra length rayon cotton top–100 deiner.	101–1	1. 15	
Harriman Hosiery	Seamless 75 denier Rayon.	340	1. 00	

1227 PLAINTIFF'S EXHIBIT 40

Dept. 47 WOMEN'S HOSIERY

1. Items for Which There Are Confirmations Between January 1 and March 31, Which Are Not on the Ceiling Price List

Date of confirmation	Description	Confirmation No.	Confirmation price	Style No.	Listed ceiling price
1-6-42	Berkshire Manufacturing Company:				
	Outside silk, lisle top	43967	$1.65	6068	
	Rayon top	43965	1.00	1424	
	Rayon top	43965	1.15	1426	
	Nylon	43965	1.95	1413	
	Nylon	43965	1.95	1420	
	Nylon, Rayon top	43965	1.65	1422	
	Can't Run	49940	1.65	1418	
	Rayon top	49940	1.00	1405	
	Nylon, Rayon top	49940	1.95	3051	
1-14-42	Berkshire—Outside silk, lisle top	49938P	1.65	6008	
1-6-42	Can't Run, Nylon, Lisle top	43966	1.65	1413	
	All Nylon	43966	1.95	1420	
	All Nylon—Rayon top	43966	1.65	1422-23	
	Can't Run silk	44221	1.65	1430	
	Can't Run Nylon	44221	1.95		
	Silk—Rayon top	44221	1.00	1424	
1-28-42	Cannon Three Thread All Silk	44069	1.35	346	
	Two Thread All Silk	44069	1.35	346	
	Nylon—20 Denier	44069	1.95	120	
1-27-42	Edelstein—Lisle	44054	1.50	908	
	Nylon—Lisle 30/51	44054	1.95	951	
3-16-42	Silk	44228B	1.35	1413	
	Nylon—Rayon top	44228B	1.95	1518	
	Glen Raven—All Nylon, lisle top	44225	1.95	3051	
	Three thread 42, Rayon top	44224	1.15	1018	
3-4-42	M. Goodman & Son:				
	All Silk 351 Hytwist Crepe	44202	1.95		
	Nylon, lisle top	44203	1.95	5130	
2-11-42	Hess, Taylor & Price:				
	Nylon Seamless Cotton top	49144	1.65		
	Hosiery Sales:				
	7 thread lisle top and foot	44073	1.15		
1-17-42	George R. Holland:				
	No Seam Nylon	43975	1.95	3431	
2-9-42	Kayser:				
	Silk—rayon top	49136	1.50	370	
	Stylon—Nylon	49136	1.95		
	Sheer—all Nylon	49136	1.95		
1-27-42	Nylon Irregular — all Nylon	44070	1.69		
	Nylon Irregular—Cotton top	44070	1.29		

PLAINTIFF'S EXHIBIT 40—Continued

Date of confirmation	Description	Confirmation No.	Confirmation price	Style No.	Listed ceiling price
	Kayser—Continued.				
1-7-42	Stylon	12496	$1. 50		
	Shurlon	12496	1. 95		
	Fit All	12496	1. 95	299	
1-24-42	Kirby Black:				
	Service Weight Nylon lisle top	43964	1. 65		
1228					
3-17-42	Mamouth Hosiery:				
	Nylon—Rayon top	00635	$1. 65	373	
	Silk—service weight	00635	1. 25	700	
	100 Denier Rayon	00635	. 89	25	
	Medalion Hosiery:				
	Three Thread 51 Gauge-All Silk	00435	1. 65	351	
3- 5-42	National—Round the Clock Nylon	44213	1. 75		
1-26-42					
1-16-42	Phoenix:				
	Cotton—sport	43972	. 39	4340	
	Cotton—sport	43972	. 39	471	
	Nylon—lisle top	43802	1. 95	327	
	All Nylon	43802	1. 95	795	
	Nylon—Cotton top	43802	1. 65	329	
	Nylon—Irregular lisle	00633	1. 29		
	All Nylon	00633	1. 69		
3- 3-42	Nylon	49142	2. 25		
1-14-42	100 Denier Rayon	43962	. 79	310	
	75 Denier Rayon	43962	1. 00	312	
2- 2-42	Fancy lisle	43960	1. 15	358	
3-10-42	Runless	44208	1. 65	781	
	Outsize lisle	44208	1. 50	353	
3- 5-42	Phil Rheinzald:				
	All Silk—run proof	44217	1. 95	1000	
	Silk, lisle top	44217	1. 65	725	
	Silk, lisle top	44217	1. 65	531	
	Nylon—Rayon top	44217	1. 95	3045	
3- 4-42	Triumph:				
	Plain lisle	44204	1. 15	255	
2- 9-42	Van Raalte:				
	Irregular—Nylon	49134	1. 49	SS305	
	Irregular—Nylon	49134	1. 49	SS515	
	Irregular—lisle top	49134	1. 29	SS300	
	Irregular—lisle top	49134	1. 29	SS400	
3- 5-42	Van Raalte:				
	All Nylon	44216	2. 25	Wisp	
	Nylon—Cotton top	44216	1. 95	V500	
	Nylon	44216	1. 95	Minage	
	Nylon—extra	47936	1. 95	V401	
3-25-42	Four Thread—All Silk	43810	1. 15	Allusion	
1-27-42	J. P. Voorhes:				
	Seamless silk	44067	1. 00	339	
	Seamless Nylon	49939	1. 95		
	Seamless Nylon	49137	1. 65		

PLAINTIFF'S EXHIBIT 41

WOMEN'S HOSIERY

Dept. 47

MARK UP

Date	Mfg's. No.	Description	Original retail	Proposed retail	Mark up
3/2-4/6/42	345 RT	Silk	$1.00 3 for $2.90	$1.15 3-$3.35	No. 88-39.
3/2-4/6/42	345 RT	Silk	$1.00 3 for $2.90	$1.15 3-$3.35	
2/2-4/21/42	Flex 41	Silk	$1.35 3 for $3.95	$1.50 3-$4.35	No. 88-40.
3/2-4/25/42	805	Silk	$1.65 3 for $4.80	$1.95 3-$5.75	No. 88-41.
3/2-4/25/42	C444	Silk	$1.25 3 for $3.65	$1.65 3-$4.75	
3/2-4/25/42	C444	Silk	$1.25 3 for $3.65	$1.65 3-$4.75	
3/2-5/13/42	C444	Silk	$1.25 3 for $3.65	$1.50	No. 88-42.
5/2-5/13/42	B327	Hose	$0.69	$0.79	
3/2-8/5/42	345	Hose	$1.15	$1.35	No. 88-45.
9/1-8/24/42		Silk	$0.77	$1.35 3-$3.95	No. 88-46.
9/1-8/24/42	925	Silk	$0.88	$1.35 3-$3.95	
9/1-8/24/42	939	Silk	$0.89 3 for $2.60	$1.15 3-$3.35	
9/1-8/24/42	949	Silk	$0.77	$1.15 3-$3.35	
9/1-8/24/42	939	Silk	$0.88	$1.15 3-$3.35	
2/2-8/24/42		Cotton	$1.35 3 for $3.95	$1.50 3-$4.35	
8/2-10/1/42	551	Rayon	$1.15 3 for $3.35	$1.35 3-$3.95	No. 88-49.
9/2-10/1/42	551	Rayon	$1.15 3 for $3.35	$1.35 3-$3.95	

JEAN ROTHENBERG.
J. R.

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1230 PLAINTIFF'S EXHIBIT 4

OPA #7
Revised

NEW MERCHANDISE REPORT FOR PRICE CONTROL OFFICE

This form is to be made out for each new item and sent to Price Control Office when merchandise arrives.

Confirmation #..... Dept.#..... Date.....

1. New Article.....

Vendor ..... Style #.....

Description .....

Cost Price $..... Mark-up %..... Retail $.....

Ceiling Price.....

The above ceiling price is established by one of the following comparisons

2. Use method A if you can. If you can't, use method B. If methods A and B do not apply, contact Price Control Office.

A. Similar article in our store:

Vendor ..... Style #.....

Description.....

Cost Price $..... Mark-up %.....

Ceiling Price $..... Retail Price $.....

B. Similar article in a competitive store:

Name of Store.....

Vendor (if possible).....

Style #..... Description .....

Ceiling Price $.....

If this item is a "cost of living commodity" check here: ☐

Buyers' signature.....

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PLAINTIFF'S EXHIBIT 26

Dept. #55

WOMEN'S SHOES

Mdse. for Which Confirmations Have Been Received and for Which Mdse. Has Been Sold by the Store During March and Not Listed on Ceiling List

Manufacturers	Confirmation No.	Date	Received date	Style No.	Description	Cost	Retail
Best Shoe Co	43470	4/24	4/24/42	1207	All Red Cape	$2.20	$3.95
			5/5/42	1203	All Green Cape		
			5/28/42	1209	All White Cape		
Desco Shoe Co	25976	11/28/41	4/23/42	820	White & Red		
			5/12/42		White & Blue	1.35	2.25
			5/15/42		Red & White		
					Tan & Tan		
					Biege & Brown		
					Light Blue & Red		
					Green & Red		
					Brown & Biege		
					Dusty Rose & Red		
					Chartreuse-blue		
Frederick-Speier	1757	11/17/41	2/26/42	Annabelle	White Cape	1.35	2.25
			3/4/42		Blue		
					Red		
					Natural		
Frederick-Speier	1757	11/17/41	2/26/42	Ghillie	Royal & Candy	1.31	1.95
			3/4/42		White & Royal		
					Red & Candy		
Frederick-Speier	1757	11/17/41	2/26/42	Doris	White & Royal	1.25	1.95
			3/4/42		Red & Royal		
					White & Candy		
Fulton Leather	11732	10/13/41	3/28/42	3070/9			

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PLAINTIFF'S EXHIBIT 26—Continued

Manufacturers	Confirmation No.	Date	Received date	Style No.	Description	Cost	Retail
Frederick-Speier	1758	4/17/41	3/9/42	Olive	White & Blue	$1. 35	$2. 25
			3/18/42		Beige & Brown		
					Pastel Comb.		
					Solid Blue-Red plat. heel		
Frederick-Speier	1758	4/17/41	3/9/42	Doris	All White Cape	1. 35	2. 25
			3/18/42		Blue		
					Natural		
Frederick-Speier	1758	4/17/41	3/9/42	Mexicola	All White Cape	1. 52	2. 50
			3/18/42		All Natural		
1237 Frederick-Speier	43459	4-23-42	5-15-42	Evelyn	White, Beige, Red	1. 35	2. 50
			5-19-42				
Fashion-Footwear, Inc	61295	5-22-42	6-15-42		Kid boudoir Slippers	1. 15	1. 95
					Black-Blue		
Daniel Green Slipper Co	61265	5-11-42	5-22-42	20246	Slippers	2. 30	4. 00
			6- 1-42	40216	Slippers	2. 65	4. 50
			7- 3-42				
Gustin-Guild-Rest	61274	5-14-42	6-18-42	3509	Cape Scuffs	1. 85	3. 00
Gustin-Guild-Rest	61273	5-14-42	6-18-42	3512	Scuffs	1. 20	1. 98
Daniel Green Slipper	13653	2-31-42	2-13-42	9000	Slippers	2. 40	4. 00
			2-14-42	40216		2. 65	4. 50
				20246		2. 30	4. 00
				20230		2. 30	4. 00
				70330		2. 85	5. 00
				20303		1. 50	2. 50
Daniel Green	13642	3-16-42	4-17-42	50305	Scuff	1. 50	2. 50
J. J. Grover	13661	2-19-42	3-14-42	13661	Black kid-1-strap	2. 25	4. 00
			4- 1-42		Black kid-oxford	2. 25	4. 00
Daniel Green	11681	4-11-42	4-15-42	20230	Bambi Slippers	2. 30	4. 00
				20246	Quilted Slippers	2. 30	4. 00

				90000	Comfy Leather Slippers	2. 40	4. 00
				40216	Loll Slippers	2. 65	4. 50
Daniel Green	43465	4-24-42	5-12-42	70330	Militaire	2. 85	5. 00
Gustin-Guild-Rest	51452	3-16-42	3-25-42	4103	White & Blue	1. 10	1. 95
			4- 3-42		White & Red		
					White & Green		
Gustin-Guild-Rest	61269	5-12-42	5-21-42	4000	Print Scuffs	1. 00	1. 95
Daniel Green	43464	4-24-42	5-21-42	50305	Scuffs	1. 50	2. 50
Gustin-Guild-Rest	51451	3-16-42	4-20-42	6014	Red & Green Play Shoes	3. 25	5. 95
Huiskamp Bros	51462	3-20-42	6-20-42	5045 495	Brown—2 loop tie	2. 50	5. 00
Huiskamp Bros	51462	3-20-42	6-20-42	5201 495	Brown Monk	2. 65	5. 00
1228 Julian Kokenge	03234	7-16-42	5-27-42	L124	Brown Suede Stepin	6. 85	12. 00
Julian Kokenge	03234	7-16-42	5-27-42	L155	Wine Suede Oxford	6. 85	12. 00
Julian Kokenge	03235	7-16-42	7-16-42	L233	Black Suede Stepin	6. 85	12. 00
Julian Kokenge	03235	7-16-42	7-16-42	L192	Black Suede Oxford	6. 85	12. 00
Knight Slipper	51475	3-28-42	4-14-42	106/23	Royal-Wine	.925	1. 59
	60593	1- 9-42	2-14-42	1000	Blue-Canary-Strip	.75	1. 39
	60593	1- 9-42	2-14-42	4006-24	Blue-Wine	.90	1. 39
Laird Schober	43449	5- 4-42	6-25-42	871	Elexir-Brown Suede	5. 75	10. 95
				878	Herrod Brown Suede	5. 75	10. 95
				877	Herrod Black Suede	5. 75	10. 95
				874	Edith Black Suede	5. 75	10. 95
				869	Leone Black Suede	5. 75	10. 95
				868	Leone Brown Suede	5. 75	10. 95
				876	Evelyn Black Suede	5. 75	10. 95
				874	Briarly Black Suede	5. 75	10. 95
				875	Briarly Brown Suede	5. 75	10. 95
				873	Alta Black Suede	5. 75	10. 95
				872	Elixir Brown Suede	5. 75	10. 95
Lucille Footwear	60592	1- 9-42		346	Kid	1. 85	3. 00
Manoring Gibbs	46185	1-23-42	3-12-42	3325	Blue, Navy, Red, Black	1. 50	2. 50
				3002	Black	1. 40	2. 50
Metropolitan Shoemaker	43455	4-23-42	5-18-42	P639	Multi-color Kid Sandal	4. 55	7. 95

PLAINTIFF'S EXHIBIT 26—Continued

Manufacturers	Confirmation No.	Date	Received date	Style No.	Description	Cost	Retail
Middleton Footwear	11690	4-14-42	5-22-42	Chico	Gold & Silver	$4.10	$6.95
	11692	4-14-42	6- 3-42	Votty	Black satin	1.60	2.75
					Blue satin & wine	1.60	2.75
					Wine satin & blue	1.60	2.75
					French blue & peach	1.60	2.75
	11691	4-14-42	6- 3-42	Joyce	Print Slippers	1.60	2.75
D. Myers & Sons	43427	4-27-42		19014	Cream play shoes	1.85	2.95
	43426	4-25-42	4-27-42	19014	White Cosmos Play Shoe	1.85	2.95
Recordia	46151	10-22-41	3-28-42	335-2	Luggage sandals	1.30	2.25
M. J. Saks Shoe Corp.	60646	1- 2-42	2-31-42	9369	Blk. Gab.	3.00	5.00
				9100	Pat. Leather	3.00	5.00
				9101	Pat. Leather	3.00	5.00
				9120	Blk. Leather	3.00	5.00
1239 Salvadge Shoe Co.	61271	5-13-42	5-26-42	4012	W. T. White & Brown	3.35	6.95
Silver Slipper Mfg. Co.	13635	3-6-42	5-5-42	40353	Espadrille	1.35	2.25
Spalsburg-Steis-Deevers	51468	3-23-42	3-29-42		Tan Jodphers	3.25	5.95
United States Shoe Co.	46181	1-21-42	3-23-42	23143	Bobby Tan Calf	3.90	6.50
	13647	3-13-42	3-16-42	2319	Lumberjacks	3.90	6.50

1240 PLAINTIFF'S EXHIBIT 27

Dept. 55 WOMEN'S SHOES

Rubbers, Artics, and Rubber Boots—on Sale in Store on 10–5–42 Which Were Not Included on Submitted Price List

Manufacturer	Style No.	Price	Description
U. S. Rubber	WS991	.95	Toe Rubbers.
	WS892	1.45	Opera Rubbers.
	WS410	1.35	Storm Rubbers.
	WR631	1.95	2 Snazz Arctic.
	WR310	2.75	Kwik Fastener.
	WR398	3.50	Suede Gaytee.
		3.95	Rubber Boots (Red).
			Rubber Boots (Black).
	WR947	2.95	Gossamer Slip-on Boots.
Transcontinental Rubber Co.		1.25	Toe Rubber—Tra-flex.
B. F. Goodrich		1.95	Shu gloves.
		3.50	Shu glove—High Zepper.
Shapiro		1.95	Gold Seal–Automatic galosh.
		1.95	Gold Seal–2 Snap.
S. Kolker	5561	1.65	2 Snap Artic.
	5559	1.65	2 Snap Artic.

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Dept. 55

PLAINTIFF'S EXHIBIT 28

WOMEN'S SHOES—RUBBERS, ARCTICS, AND RUBBER BOOTS

Confirmations for Mdse. Received and Sold by Store Which Was Not on Submitted Price List

Manufacturer	Confirmation No.	Date	Received date	Style	Description	Cost	Retail
U. S. Rubber	46199	1-30-42	2-9-42	WR398	Black suede Tip Top	$1.95	$3.50
	46184	1-23-42	4-9-42	690	Keddettes	1.80	2.95
				691	Keddettes	1.80	2.95
				692	Keddettes	1.80	2.95
				693	Keddettes	1.80	2.95
				695	Keddettes	1.80	2.95
	60597	1-10-42	1-12-42		Snaps—Black	1.20	1.95
	60597	1-10-42	1-12-42		Kwick—Black	1.60	2.75
	60625	12-22-41			Black boots	2.10	3.50
	60600	1-12-42	1-13-42		Toe rubbers	.58	.95
			1-26-42		Black Rubber	.88	1.45
			2-6-42				
Transcontinental Rubber Corp.	60626	12-22-41	1-14-42	WS490	Black Storm	.88	1.25
	60589	1-9-42	1-13-42	200-1	Black	.79	1.25
				200-3	Red		
				200-5	Brown		
Hood Rubber Co	60642	12-29-41	1-6-42		Black Hicuban	2.20	3.50
					Brown Hicuban	2.20	3.50
Hecht Bros	60583	1-3-42			Black Spike	2.20	3.50
	60599	1-10-42	1-12-42		Black Arctics	1.10	1.95
					Rubber boots	2.00	3.50

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1242 PLAINTIFF'S EXHIBIT 29

WOMEN'S SHOES

Dept. 55

Schedule of Merchandise on Sale on October 5, 1942, Which Does Not Appear on Either Submitted Ceiling Price List or Store's Own Price List

Manufacturer	Style No.	Price	Description
Daniel Green	70308	550	Frou-Frou.
	70330	500	Militaire.
	70272	450	Whim.
	20314	450	Piccadilly.
	40216	450	Loll.
	40051	500	Tea for Two.
	70281	450	Joli.
	40215	450	De Orsay.
	40100	450	Dolly.
	20246	400	Vestal.
	20230	400	Bambi.
	90000	400	Comfi.
	70232	400	Joli.
	20241	350	Tapestry.
	20101	300	Quilted Satin.
	10004	300	Felt Comfy.
	20215	400	Corduroy.
Lucille Slipper Co	3660	250	Patent—Cross strap.
	3622	250	Kid Bridge.
	3616	225	Kid D'Orsay.
	346	325	Kid Everett Open toe.
	346K	300	Kid Everett Closed toe.
	310	225	Kid Cross strop—Open toe.
Gustin Guild	3309	300	Capeskin scuff.
	3512	195	Chenille scuff.
	3528	198	Rayon crepe scuff.
	4000	100	Printed scuff.
Blum Slipper	1417	195	Satin Hostess slipper.
	1309	250	Black kid comfy.
	1905	195	Soft kid comfy.
Middletown Slipper Co	3204	275	Joyce—Print Hostess.
Bloom Slipper Co	2259	225	Kid bridge slipper.
	2249	195	Kid D'Orsay.
Manning Gibbs	3325	250	Satin Embroidered slipper.
Kewar	92C	195	Pullman slippers—rayon.
	46	300	Pullman slippers—Kid leather.
Knight Slipper Co	7454-23	225	Kid slipper—soft sole.
	7454	195	Kid slipper—soft sole (new stock).
	10623	139	Summer print—soft sole.
Hermal	227	250	Corduroy step in..
	225	250	Corduroy tie.
Consolidated Slipper Co	200	195	Scuff—Shirling.
	382	195	Scuff—Shirling.
	R612	195	Bootee.
	6050	159	Bootee.
Fredrick Speier	"Anita"	195	Satin Cross Strap.
Bloom Slipper	3415	300	Fur opera—leather sole.

PLAINTIFF'S EXHIBIT 31

THE HECHT COMPANY

DEPARTMENT 60—BEDDING

Schedule of March Sales Which Establish the Base Ceiling Price and Sales After 5/18/42, Above This Price

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
3- 9-42	W. D. Fairfax	17158-24	159—9169-603.	3/3 mattress.	$19.99	9- 8-42	Greenboro	$22.99	$3.00	Not listed.
3-16-42	Grosch C. Beaudet, Jr.	17157-41	159—9169-606.	4/6 mattress.	19.99	6-15-42	Davis	29.50	9.51	Not listed.
						6-19-42	Downer	29.50	9.51	Not listed.
						6-23-42	Wingate	29.50	9.51	Not listed.
						7- 3-42	Spring	22.95	2.96	Not listed.
						7- 9-42	Klaimley	22.99	3.00	Not listed.
						7- 9-42	Porter	22.99	3.00	Not listed.
						7- 9-42	Skinner	22.99	3.00	Not listed.
						7-10-42	Carpenter	22.99	3.00	Not listed.
						7-13-42	Conoley	22.99	3.00	Not listed.
						7-13-42	Jensen	22.99	3.00	Not listed.
						7-13-42	Dant	22.99	3.00	Not listed.
						7-14-42	Hawkins	22.99	3.00	Not listed.
						7-14-42	Robinson	22.99	3.00	Not listed.
						7-14-42	Barnes	22.99	3.00	Not listed.
						7-16-42	Rease	22.99	3.00	Not listed.
						7-17-42	Weaver	22.99	3.00	Not listed.
						7-17-42	Miller	22.99	3.00	Not listed.
						7-17-42	Deiss	22.99	3.00	Not listed.
						7-24-42	Mednelson	22.99	3.00	Not listed.
						7-27-42	Cole	22.99	3.00	Not listed.

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7-29-42	Byington	22.99	3.00	Not listed.
7-29-42	Coakley	22.99	3.00	Not listed.
8- 6-42	Levin	22.99	3.00	Not listed.
8- 7-42	Keenbach	22.99	3.00	Not listed.
8-12-42	Kline	22.99	3.00	Not listed.
8-13-42	Steinbach	22.99	3.00	Not listed.
8-14-42	Delmais	22.99	3.00	Not listed.
8-14-42	Lucas	22.99	3.00	Not listed.
8-20 42	Hyde	22.99	3.00	Not listed.
8-24-42	Harris	22.99	3.00	Not listed.
8-26-42	Hegner	22.99	3.00	Not listed.
8-26-42	Rogers	22.99	3.00	Not listed.
8-26-42	Feinald	22.99	3.00	Not listed.
8-26-42	McKnight	22.99	3.00	Not listed.
8-26-42	Smith	22.99	3.00	Not listed.
8-26-42	Allen	22.99	3.00	Not listed.
8-26-42	Specht	22.99	3.00	Not listed.
8-28-42	Benson	22.99	3.00	Not listed.
8-31-42	Harris	22.99	3.00	Not listed.
8-31-42	Handy	22.99	3.00	Not listed.
8-31-42	Ford	22.99	3.00	Not listed.
8-31-42	Rasmusen	22.99	3.00	Not listed.
9- 1-42	Young	22.99	3.00	Not listed.
9- 1-42	Walker	22.99	3.00	Not listed.
9- 1-42	Flayherty	22.99	3.00	Not listed.
9- 1-42	Kelley	22.99	3.00	Not listed.
9- 1-42	Harden	22.99	3.00	Not listed.
9- 1-42	Anderson	22.99	3.00	Not listed.
9- 2-42	McPhee	22.99	3.00	Not listed.
9- 3-42	Terry	22.99	3.00	Not listed.
9- 3-42	Payne	22.99	3.00	Nor listed.
9- 3-42	Denios	22.99	3.00	Not listed.
9- 4-42	Frayseh	22.99	3.00	Not listed.
9- 4-42	Curtiss	22.99	3.00	Not listed.
9- 4-42	Shaffer	22.99	3.00	Not listed.
9- 4-42	Forkeen	22.99	3.00	Not listed.
9- 4-42	Jahomocky	22.99	3.00	Not listed.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						9- 4-42	Smith	$22.99	$3.00	Not listed.
						9- 4-42	Walkers	22.99	3.00	Not listed.
						9- 5-42	Brown	22.99	3.00	Not listed.
						9- 5-42	Parrish	22.99	3.00	Not listed.
						9- 5-42	Milk	22.99	3.00	Not listed.
						9- 5-42	Witmer	22.99	3.00	Not listed.
						9- 8-42	Hickley	22.99	3.00	Not listed.
						9- 8-42	Rufens	22.99	3.00	Not listed.
						9- 8-42	Welch	22.99	3.00	Not listed.
						9- 8-42	Swahoda	22.99	3.00	Not listed.
						9- 8-42	Rufner	22.99	3.00	Not listed.
								223.49		
						9- 8-42	Michael	22.99	3.00	Not listed.
						9- 8-42	Goods	22.99	3.00	Do.
						9- 8-42	Howard	22.99	3.00	Do.
						9- 8-42	Duncan	22.99	3.00	Do.
						9- 8-42	Norwood	22.99	3.00	Do.
						9- 8-42	Lawrence	22.99	3.00	Do.
						9- 8-42	Horn	22.99	3.00	Do.
						9- 8-42	Fazenbohr	22.99	3.00	Do.
						9- 8-42	Luckman	22.99	3.00	Do.
						9- 8-42	Rufener	22.99	3.00	Do.
						9- 9-42	Hicks	22.99	3.00	Do.
						9- 9-42	Blankely	22.99	3.00	Do.
						9- 9-42	Phillip	22.99	3.00	Do.
						9- 9-42	McIntosh	22.99	3.00	Do.

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					9- 9-42	Todd	22.99	3.00	Do.
					9-10-42	Donon	22.99	3.00	Do.
					9-10-42	Babsbell	22.99	3.00	Do.
					9-11-42	Dorman	22.99	3.00	Do.
					9-11-42	Norris	22.99	3.00	Do.
					9-11-42	Fraczymis	22.99	3.00	Do.
					9-11-42	Rea	22.99	3.00	Do.
					9-11-42	Eppstein	22.99	3.00	Do.
					9-11-42	Landow	22.99	3.00	Do.
					9-11-42	Grossburth	22.99	3.00	Do.
					9-11-42	Selinsky	22.99	3.00	Do.
					9-11-42	Emells	22.99	3.00	Do.
					9-11-42	Carr	22.99	3.00	Do.
					9-11-42	Mernone	22.99	3.00	Do.
					9-11-42	Knight	22.99	3.00	Do.
					9-11-42	Rossi	22.99	3.00	Do.
					9-11-42	Wright	22.99	3.00	Do.
					9-12-42	Jacobs	22.99	3.00	Do.
					9-15-42	Waldron	22.99	3.00	Do.
					9-15-42	Murphy	22.99	3.00	Do.
					9-15-42	Bobskill	22.99	3.00	Do.
					9-15-42	Embroy	22.99	3.00	Do.
					9-16-42	Deyse	22.99	3.00	Do.
					9-16-42	Mallows	22.99	3.00	Do.
					9-18-42	Hughes	29.50	9.51	Do.
					9-24-42	Poland	22.99	3.00	Do.
					10-14-42	White	22.90	2.91	Do.
					10-16-42	Market Country Club	29.50	9.51	Do.
					10-16-42	James	29.50	9.51	Do.
					10-19-42	Weller	29.50	9.51	Do.
3- 7-42	Margaret Morcock	7138-1	4159—9169-1020	3/3 mattress	19.99	5-24-42	McDougal	29.50	9.51	Do.
						5-28-42	Ausberry	29.50	9.51	Do.
						6- 3-42	Freyeisen	29.50	9.51	Do.
						6- 4-42	Merriweather	29.50	9.51	Do.
						6-18-42	Fisher	22.99	3.00	Do.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						6-19-42	Rosevelt	$22.99	$3.00	Not listed.
						6-20-42	Roosevelt Hotel	22.99	3.00	Do.
						7- 9-42	Monahan	22.99	3.00	Do.
						7- 9-42	Brende	22.99	3.00	Do.
						7- 9-42	Longbach	22.99	3.00	Do.
						7- 9-42	White	22.99	3.00	Do.
						7- 9-42	White	22.99	3.00	Do.
						7- 9-42	Luntz	22.99	3.00	Do.
						7-13-42	Woodbine Country Club.	22.99	3.00	Do.
						7-14-42	Hadad	22.99	3.00	Do.
						7-15-42	Budding	22.99	3.00	Do.
						7-17-42	Hayden	22.99	3.00	Do.
						7-22-42	Linden	22.99	3.00	Do.
						7-22-42	Ashlop	22.99	3.00	Do.
						7-23-42	Steves	22.99	3.00	Do.
						7-24-42	Gelnaw	22.99	3.00	Do.
						7-24-42	Harris	22.99	3.00	Do.
						7-28-42	Metztroth	22.99	3.00	Do.
						7-29-42	Edwards	22.99	3.00	Do.
						7-29-42	Meier	22.99	3.00	Do.
						7-30-42	Evans	22.99	3.00	Do.
						7-30-42	Story	22.99	3.00	Do.
						7-31-42	Feldman	22.99	3.00	Do.
									267.99	
1253					19.99	7-31-42	Brown	22.99	3.00	Not listed.

						8- 4-42	Perticone	22.99	3.00	Not listed.
						8- 4-42	Wegholer	22.99	3.00	Not listed.
						8- 5-42	Ferringer	22.99	3.00	Not listed.
						8- 6-42	Brukart	22.99	3.00	Not listed.
						8-10-42	Melzer	22.99	3.00	Not listed.
						8-12-42	Warren	22.99	3.00	Not listed.
						8-13-42	McCauly	22.99	3.00	Not listed.
						8-14-42	Newberry	22.99	3.00	Not listed.
						8-17-42	Feit	22.99	3.00	Not listed.
						8-18-42	Turpin	22.99	3.00	Not listed.
						8-18-42	Stout	22.99	3.00	Not listed.
						8-18-42	Osmond	22.99	3.00	Not listed.
						8-19-42	Correct	22.99	3.00	Not listed.
						8-21-42	Henry	22.99	3.00	Not listed.
						10- 5-42	Brady	22.99	3.00	Not listed.
						10-10-42	Long	29.50	9.51	Not listed.
						10-12-42	McKay	29.50	9.51	Not listed.
						10-21-42	Seymore	29.50	9.51	Not listed.
						10-27-42	White	29.50	9.51	Not listed.
3-26-42	Grace Markman.		159—9169-1020.	4/6 mattress.	19.99	10-27-42	Correel	29.50	9.51	Not listed.
						5-19-42	Williams	29.50	9.51	Not listed.
						5-25-42	Chunn	29.50	9.51	Not listed.
						5-27-42	Carrett	22.99	3.00	Not listed.
						6- 1-42	Harley	22.99	3.00	Not listed.
						6- 5-42	Vandiner	29.50	9.51	Not listed.
						6-11-42	Augustin	29.50	9.51	Not listed.
						6-15-42	Tiderche	29.50	9.51	Not listed.
						6-15-42	Hughes	29.50	9.51	Not listed.
						6-16-42	Malt	29.50	9.51	Not listed.
						6-20-42	Roosevelt Hotel	22.95	2.96	Not listed.
						6-24-42	Vanderwert	22.99	3.00	Not listed.
						6-29-42	Meigs	29.50	9.51	Not listed.
						7- 9-42	Yoder	22.99	3.00	Not listed.
						7- 9-42	Robinson	22.99	3.00	Not listed.
						7- 9-42	Strout	22.99	3.00	Not listed.
						7- 9-42	McClay	22.99	3.00	Not listed.
						7- 9-42	Price	22.99	3.00	Not listed.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						7- 9-42	Ford	$22.99	$3.00	Not listed.
						7- 9-42	Emmett	22.99	3.00	Not listed.
						7-10-42	Bishop	22.99	3.00	Not listed.
						7-10-42	Woolstner	22.99	3.00	Not listed.
						7-10-42	Hoke	22.99	3.00	Not listed.
						7-13-42	Lewis	22.99	3.00	Not listed.
						7-13-42	Webber	22.99	3.00	Not listed.
						7-15-42	Dosher	22.99	3.00	Not listed.
						7-16-42	McKane	22.99	3.00	Not listed.
						7-16-42	Nenskus	22.99	3.00	Not listed.
						7-17-42	Liddard	22.99	3.00	Not listed.
						7-17-42	Hodomeck	22.99	3.00	Not listed.
						7-17-42	Burton	22.99	3.00	Not listed.
						7-17-42	Carter	22.99	3.00	Not listed.
						7-20-42	Raimy	22.99	3.00	Not listed.
						7-20-42	Roberts	22.99	3.00	Not listed.
						7-21-42	Cooksey	22.99	3.00	Not listed.
						7-21-42	Williams	22.99	3.00	Not listed.
						7-21-42	Wilmot	22.99	3.00	Not listed.
						7-22-42	Stockburger	22.99	3.00	Not listed.
						7-24-42	Ickes	22.99	3.00	Not listed.
						7-24-42	Neirkohis	22.99	3.00	Not listed.
						7-24-42	Meglimore	22.99	3.00	Not listed.
						7-24-42	Lowell	22.99	3.00	Not listed.
						7-25-42	Kallich	22.99	3.00	Not listed.
						7-24-42	Farner	22.99	3.00	Not listed.
						7-27-42	Edward	22.99	3.00	Not listed.
						7-28-42	Dignars	22.99	3.00	Not listed.

							7-28-42	Bodziak	22.99	3.00	Not listed.
							7-30-42	Evans	22.99	3.00	Not listed.
							7-31-42	Brockst	22.99	3.00	Not listed.
							7-31-42	Faryer	22.99	3.00	Not listed.
							7-31-42	Erland	22.99	3.00	Not listed.
										29,759	
1254							8- 3-42	Lightner	22.99	3.00	Not listed.
							8- 3-42	Motley	22.99	3.00	Not listed.
							8- 3-42	Winstead	22.99	3.00	Not listed.
							8- 4-42	Dear	22.99	3.00	Not listed.
							8- 5-42	Abell	22.99	3.00	Not listed.
							8- 5-42	Caruthers	22.99	3.00	Not listed.
							8- 5-42	Leany	22.99	3.00	Not listed.
							8- 6-42	Saunders	22.99	3.00	Not listed.
							8- 7-42	Daniels	22.99	3.00	Not listed.
							8- 7-42	Gigerich	22.99	3.00	Not listed.
							8- 7-42	Stewart	22.99	3.00	Not listed.
							8- 7-42	Arnold	22.99	3.00	Not listed.
							8- 7-42	Saunders	22.99	3.00	Not listed.
							8-11-42	Swados	22.99	3.00	Not listed.
							8-12-42	Murphy	22.99	3.00	Not listed.
							8-13-42	Youngborg	22.99	3.00	Not listed.
							8-13-42	Merton	22.99	3.00	Not listed.
							8-14-42	Hames	22.99	3.00	Not listed.
							8-14-42	Erwin	22.99	3.00	Not listed.
							8-14-42	Heberly	22.99	3.00	Not listed.
							8-17-42	Shop	22.99	3.00	Not listed.
							8-17-42	Rickenbacker	22.99	3.00	Not listed.
							9- 5-42	Hanrichs	22.99	3.00	Not listed.
							9- 5-42	Sheridan	22.99	3.00	Not listed.
							10- 9-42	Hill	29.50	9.51	Not listed.
3-27-42	W. J. Hamacher.	16994-34	866-30	3/3 mattress.	9.95		5-23-42	Smith	12.95	3.00	$13.95.
							6- 6-42	Scott	12.95	3.00	$13.95.
							7- 2-42	Echols	12.95	3.00	$13.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						7- 8-42	Fairweather	$12.95	$3.00	$13.95.
						7-10-42	Ugast	12.95	3.00	$13.95.
						7-10-42	Newman	12.95	3.00	$13.95.
						7-13-42	Brown	12.95	3.00	$13.95.
						7-13-42	Merritt	12.95	3.00	$13.95.
						7-13-42	Ramsey	12.95	3.00	$13.95.
3-17-42	Mrs. S. G. Townshendor.	17168-13	866—Soundsleep.	mattress	$17.77	7-16-42	Dome	12.95	3.00	$13.95.
						10-15-42	Wingo	22.50	4.73	Not listed.
						10-18-42	Saisfield	22.50	4.73	Not listed.
						10-18-42	Flach	22.50	4.73	Not listed.
						10-21-42	Murphy	22.50	4.73	Not listed.
						10-22-42	Murphy	22.50	4.73	Not listed.
3-21-42	J. Goggin	17142-2	307—Sleepway.	mattress	19.99	9-12-42	Bathurst	22.50	3.51	Not listed.
						9-17-42	Betters	22.50	3.51	Not listed.
3- 2-42	Jack E. Lega	17156-4	307-25: C12 blue C16 blue	studio	25.00	7- 2-42	Ellis	29.99	4.99	Not listed.
						9-14-42	Larson	39.95	14.95	Not listed.
						9-14-42	Locke	39.95	14.95	Not listed.
						9-23-42	Dengman	39.95	14.95	Not listed.
						9-26-42	Moorhead	39.95	14.95	Not listed.
						10- 3-42	Torbett	39.95	14.95	Not listed.
						10- 6-42	Vermillion	39.95	14.95	Not listed.
						10- 8-42	Metkin	39.95	14.95	Not listed.
						10- 9-42	Plowman	39.95	14.95	Not listed.
						10- 9-42	Smith	39.95	14.95	Not listed.

			C17 green			10- 9-42	Cudy	39.95	14.95	Not listed.
						9-10-42	Beaty	39.95	14.95	Not listed.
						10- 2-42	O'Hare	39.95	14.95	Not listed.
						10-15-42	Crawford	39.95	14.95	Not listed.
						10-27-42	Hocrins	39.95	14.95	Not listed.
			C15 wine			9- 5-42	LeForge	39.95	14.95	Not listed.
						9- 8-42	Larsen	39.95	14.95	Not listed.
						9-11-42	Arbogast	39.95	14.95	Not listed.
						9-12-42	Arbogast	39.95	14.95	Not listed.
						9-14-42	Blum	39.95	14.95	Not listed.
						9-15-42	Gordon	39.95	14.95	Not listed.
						9-19-42	Presch	39.95	14.95	Not listed.
						9-19-42	Wagner	39.95	14.95	Not listed.
								575.07		
						9-21-42	McKay	39.95	14.95	Not listed.
						9-22-42	American B	39.95	14.95	Not listed.
						9-25-42	Nash	39.95	14.95	Not listed
						9-29-42	Watkins	39.95	14.95	Not listed.
						9-30-42	Condit	39.95	14.95	Not listed.
						10- 1-42	Jackson	39.95	14.95	Not listed.
						10-23-42	Alsop	39.95	14.95	
			T78 blue			5-29-42	Ballenger	34.95	9.95	Not listed.
						5-29-42	Taylor	34.95	9.95	Not listed.
						6- 4-42	Mathews	34.95	9.95	Not listed.
			J233			7-21-42	Johnson	29.99	4.99	Not listed.
			J80 blue			5-26-42	Huff	34.95	9.95	Not listed.
						6- 5-42	Sullivan	34.95	9.95	Not listed.
			F27 wine			8-31-42	Vogt	34.95	9.95	Not listed.
			F27 green			7-15-42	Leibe	29.99	4.99	Not listed.
						7-21-42	Shaecos	29.99	4.99	Not listed.
						7-21-42	Laren	29.99	4.99	Not listed.
3-26-42	Overhulser, Nellie.	17179	307-3	studio	34.95	7-21-42	Dickerson	39.99	5.04	Not listed.
						7-21-42	Kingman	39.99	5.04	Not listed.
3-26-42	Mrs. Aubrey Spivey.	17178-36	837-21412 cover 2125.	sofa bed.	44.99	7-17-42	Ehrich	49.95	4.96	Not listed.
						7-17-42	Slompley	49.95	4.96	Not listed.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
3- 2-42	Jack E. Lega	17156-4	307-25 F26 green.	studio	$25.00	7-21-42	Grant	$29.99	$4.99	Not listed.
			28 blue			7-21-42	Betts	$29.99	$4.99	Not listed.
						8-21-42	Betts	29.99	4.99	Not listed.
						7-27-42	Barnes	29.00	4.00	Not listed.
						7-31-42	Butter	29.00	4.00	Not listed.
						8- 3-42	Groce	29.00	4.00	Not listed.
						8- 7-42	Caplan	34.95	9.95	Not listed.
3- 4-42	William Rice	10990-41	60—6210—489 finish.	2/9 utility cot.	39.95	9-15-42	Blakely	34.95	9.95	
						9-10-42	Gabson	44.95	5.00	$39.99.
						9-10-42	Roberts	49.95	10.00	$39.99.
						9-10-42	Bressenor	44.95	5.00	$39.99.
3-14-42	Col. L. Watrous.	17145-11	60—777/108	cot	26-50	9-22-42	Palburg	44.00	4.05	$39.99.
						5-27-42	Dunbar	27.50	1.00	$27.50.
						5-28-42	Purvis	27.50	1.00	$27.50.
						5-29-42	Robbins	27.50	1.00	$27.50.
						6- 1-42	Smith	27.50	1.00	$27.50.
						6- 4-42	Confield	27.50	1.00	$27.50.
						6-25-42	Walker	27.50	1.00	$27.50.
						10-20-42	York Safe & Lock Co.	27.50	1.00	$27.50.
						10-29-42	Morgan	27.50	1.00	$27.50.
3-24-42	Estell Reif	17146-10	90—2/679 Streamline.	2/6 & 4/0—cots.	24.50	10-31-42	Frey	27.50	1.00	$27.50.
						6- 4-42	Van Horn	34.95	10.00	Not listed.
						6- 8-42	Leonard	34.95	10.00	Not listed.
						6-12-42	Betts	34.95	10.00	Not listed.
						6-22-42	Mills	34.95	10.00	Not listed.
						6-24-42	Haney	34.95	10.00	Not listed.

							6-30-42	Clefwin	34.95	10.00	Not listed.
							7- 3-42	Joseph	34.95	10.00	Not listed.
							7-20-42	Abraham	34.95	10.00	Not listed.
							7-21-42	Leonardi	34.95	10.00	Not listed.
							7-22-42	Altine	34.95	10.00	Not listed.
							7-28-42	Dawson	34.95	10.00	Not listed.
							7-29-42	Fidler	34.95	10.00	Not listed.
							7-29-42	Palmer	34.95	10.00	Not listed.
							8-18-42	Scott	34.95	10.00	Not listed.
							8-25-42	Peters	34.95	10.00	Not listed.
							9-27-42	Cleavland	34.95	10.00	Not listed.
3- 2-42	Carlos Campbell.	15186-12	159-978	3/1v Box spring-1020.	19.99	10- 7-42	Hobbs		29.50	9.51	$29.95.
						10-28-42	Flannagan		29.50	9.51	$29.95.
							6-11-42	Rosenfelt	22.99	3.00	$29.95.
							7- 3-42	St. Leo	22.99	3.00	$29.95.
							7- 9-42	Monahand	22.99	3.00	$29.95.
							7- 9-42	Brehgle	22.99	3.00	$29.95.
							7- 9-42	Lonedeste	22.99	3.00	$29.95.
							7-14-42	Hodad	22.99	3.00	$29.95.
							7-15-42	Buddin	22.99	3.00	$29.95.
							7-22-42	Rau	22.99	3.00	$29.95.
							7-22-42	Linden	22.99	3.00	$29.95.
							7-22-42	Apostolos	22.99	3.00	$29.95.
							7-24-42	Oilnaw	22.99	3.00	$29.95.
							7-22-42	Harris	22.99	3.00	$29.95.
							7-29-42	Edwards	22.99	3.00	$29.95.
							7-29-42	Weir	22.99	3.00	$29.95.
							7-30-42	Schiedy	22.99	3.00	$29.95.
							7-30-42	Evans	22.99	3.00	$29.95.
							7-30-42	Story	22.99	3.00	$29.95.
							7-31-42	Brounlak	22.99	3.00	$29.95.
							8-10-42	Brochart	22.99	3.00	$29.95.
							8-10-42	Metzer	22.99	3.00	$29.95.
							8-14-42	McCauly	22.99	3.00	$29.95.
							8-14-42	Newberry	22.99	3.00	$29.95.
							8-17-42	Story	22.99	3.00	$29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-17-42	Felt	$22.99	$3.00	$29.95.
						8-18-42	Turson	22.99	3.00	$29.95.
						8-18-42	Stout	22.99	3.00	$29.95.
						8-18-42	Osmond	22.99	3.00	$29.95.
						9- 5-42	Stott	22.99	3.00	$29.95.
						9- 8-42	Williams	22.99	3.00	$29.95.
						9- 8-42	Chanttân	22.99	3.00	$29.95.
						9- 8-42	Schwartz	22.99	3.00	$29.95.
						9- 9-42	Lauther	22.99	3.00	$29.95
						9- 9-42	Merritt	22.99	3.00	$29.95.
						9-10-42	Bray	22.99	3.00	$29.95.
						9-10-42	Elliot	22.99	3.00	$29.95.
						9-10-42	Stoks	22.99	3.00	$29.95.
						9-10-42	Lippencott	22.99	3.00	$29.95.
						9-11-42	Droule	22.99	3.00	$29.95.
						9-11-42	Schmidt	22.99	3.00	$29.95.
						9-11-42	Lewis	22.99	3.00	$29.95.
						9-11-42	Chabot	22.99	3.00	$29.95.
						9-11-42	Eurich	22.99	3.00	$29.95.
						9-11-42	Neilson	22.99	3.00	$29.95.
						9-12-42	Marshall	22.99	3.00	$29.95
						9-16-42	Sardun	22.99	3.00	$29.95.
				3/1 spring —1020 (4/4).		8- 4-42	Dear	22.99	3.00	$29.95.
						8- 5-42	Atrel	22.99	3.00	$29.95.
						8- 5-42	Cartthers	22.99	3.00	$29.95.
						8- 6-42	Saunders	22.99	3.00	$29.95.
						8- 7-42	Daniels	22.99	3.00	$29.95.
						8- 7-42	Oigerich	22.99	3.00	$29.95.

8- 7-42	Stewart	22.99	3.00	$29.95.
8- 7-42	Arnold	22.99	3.00	$29.95.
8-17-42	Saunders	22.99	3.00	$29.95.
8-11-42	Swados	22.99	3.00	$29.95.
8-12-42	Murphy	22.99	3.00	$29.95.
8-13-42	Youngblood	22.99	3.00	$29.95.
8-14-42	Minton	22.99	3.00	$29.95.
8-13-42	Hones	22.99	3.00	$29.95.
8-14-42	Irwin	22.99	3.00	$29.95.
8-14-42	Heherly	22.99	3.00	$29.95.
8-17-42	Sacks	22.99	3.00	$29.95.
9- 5-42	Hendricks	22.99	3.00	$29.95.
9- 5-42	Wiltener	22.99	3.00	$29.95.
9- 5-42	Heckly	22.99	3.00	$29.95.
9- 8-42	Wilson	22.99	3.00	$29.95.
9- 8-42	Greenbaum	22.99	3.00	$29.95.
9- 8-42	Greenbaum	22.99	3.00	$29.95.
9- 8-42	Purks	22.99	3.00	$29.95.
9- 8-42	Smokoda	22.99	3.00	$29.95.
9- 9-42	Hicks	22.99	3.00	$29.95.
9-12-42	Marshall	22.99	3.00	$29.95.
10- 8-42	Onfton	22.99	3.00	$29.95.
10- 9-42	Dukhate	29.99	10.00	$29.95.
7-10-42	Reechett	27.50	7.51	$29.95.
7-15-42	Paschol	27.50	7.51	$29.95.
7-28-42	Berry	29.95	9.96	29.95.
7-9-42	Rosenberg	29.50	9.51	29.95.
7-9-42	Rosh	22.99	3.00	29.95.
7-13-42	Relm	22.99	3.00	29.95.
7-13-42	Markham	22.99	3.00	29.95.
7-17-42	Rosenberg	22.99	3.00	29.95.
7-24-42	Baumgarten	22.99	3.00	29.95.
7-24-42	Merrill	22.99	3.00	29.95.
10-8-42	Rudden	22.99	3.00	29.95.
9-9-42	Campbell	22.99	3.00	29.95.
9-10-42	Bishop	22.99	3.00	29.95.

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PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						9-10-42	Forteliney	$22.99	$3.00	$29.95.
						9-10-42	Baskill	22.99	3.00	29.95.
						5-27-42	Demoll	24.95	4.96	29.95.
						7-17-42	Saunders	29.95	9.96	29.95.
						7-17-42	Bamon	29.95	9.96	29.95.
						9-20-42	Fartenberg	22.99	3.00	29.95.
						10-16-42	Barnes	22.99	3.00	29.95.
						9-25-42	Curron	22.99	3.00	29.95.
						6-5-42	Van Dervert	29.50	9.51	29.95.
						6-16-42	Wolf	29.50	9.51	29.95.
						6-20-42	Roosevelt Hotel	22.99	3.00	29.95.
						6-24-42	Van Dervert	22.99	3.00	29.95.
						6-29-42	Mays	29.50	9.51	29.95.
						7-9-42	Yoder	22.99	3.00	29.95.
						7-9-42	Strout	22.99	3.00	29.95.
						7-9-42	McClay	22.99	3.00	29.95.
						7-9-42	Price	22.99	3.00	29.95.
						7-9-42	Ford	22.99	3.00	29.95.
						7-9-42	Althouse	22.99	3.00	29.95.
						7-10-42	Woolsly	22.99	3.00	29.95.
						7-10-42	Lane	22.99	3.00	29.95.
						7-13-42	Weler	22.99	3.00	29.95.
						7-15-42	McCane	22.99	3.00	29.95.
						7-16-42	Scott	22.99	3.00	29.95.
						7-16-42	Venskny	22.99	3.00	29.95.
						7-17-42	Liddard	22.99	3.00	29.95.
						7-17-42	Hodorouis	22.99	3.00	29.95.
						7-17-42	Burton	22.99	3.00	29.95.

				7-17-42	Custard	22.99	3.00	29.95.
				7-20-42	Ranny	22.99	3.00	29.95.
				7-20-42	Roberts	22.99	3.00	29.95.
				7-21-42	Cooksey	22.99	3.00	29.95.
				7-21-42	Williams	22.99	3.00	29.95.
				7-21-42	Lichtmore	22.99	3.00	29.95.
				7-21-42	Wilmot	22.99	3.00	29.95.
				7-21-42	Stockberg	22.99	3.00	29.95.
				7-24-42	Pearson	22.99	3.00	29.95.
				7-24-42	Vierkohr	22.99	3.00	29.95.
				7-24-42	Miglore	22.99	3.00	29.95.
				7-24-42	Lovell	22.99	3.00	29.95.
				7-24-42	Kallich	22.99	3.00	29.95.
				7-24-42	Farmer	22.99	3.00	29.95.
				7-27-42	Elland	22.99	3.00	29.95.
				7-28-42	Dianer	22.99	3.00	29.95.
				7-30-42	Bodenoh	22.99	3.00	29.95.
				7-30-42	Evans	22.99	3.00	29.95.
				7-30-42	Leahy	22.99	3.00	29.95.
				7-31-42	Brufard	22.99	3.00	29.95.
				8-3-42	Lightner	22.99	3.00	29.95.
				8-3-42	Motley	22.99	3.00	29.95.
				8-3-42	Winstead	22.99	3.00	29.95.
				8-4-42	Outer	22.99	3.00	29.95.
				9-3-42	Tompkins	22.99	3.00	29.95.
				9-3-42	Folkenroth	22.99	3.00	29.95.
				9-3-42	Sommers	22.99	3.00	29.95.
				9-3-42	Connell	22.99	3.00	29.95.
				9-3-42	Levy	22.99	3.00	29.95.
				9-3-42	Mederstoanes	22.99	3.00	29.95.
				9-4-42	Slekman	22.99	3.00	29.95.
				9-4-42	Rich	22.99	3.00	29.95.
							269.39	
1258		3/1 Bed-spring—1020	19.99	9- 5-42	Seabrook	22.99	3.00	$29.95.
				9-25-42	Morris	22.99	3.00	$29.95.
				10- 3-42	O'Mally	22.99	3.00	$29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						10- 8-42	Willis	$22.99	$3.00	$29.95.
						8-28-42	Beck	22.99	3.00	$29.95.
						9- 2-42	Johnson	26.49	6.50	$29.95.
						9-27-42	Cannon	22.99	3.00	$29.95.
						9-27-42	Polland	*29.50	9.51	$29.95.
						7- 8-42	Hotel Roosevelt	22.99	3.00	$29.95.
						7- 9-42	Forrester	22.99	3.00	$29.95.
						7-10-42	Walton	22.99	3.00	$29.95.
						7-13-42	Parkerson	22.99	3.00	$29.95.
						7-13-42	Frizzel	22.99	3.00	$29.95.
						7-14-42	Hester	22.99	3.00	$29.95.
						7-15-42	Agner	22.99	3.00	$29.95.
						7- 6-42	Prostemar	22.99	3.00	$29.95.
						7- 6-42	Reinhardt	22.99	3.00	$29.95.
						7- 7-42	Fritz	22.99	3.00	$29.95.
						7-17-42	Petman	22.99	3.00	$29.95.
						7-17-42	Fritz	22.99	3.00	$29.95.
						7-22-42	Greene	22.99	3.00	$29.95.
						7-22-42	Haggert	22.99	3.00	$29.95.
						7-22-42	Bernstein	22.99	3.00	$29.95.
						7-22-42	Marrame	22.99	3.00	$29.95.
						7-24-42	Lane	22.99	3.00	$29.95.
						7-24-42	Tarrant	22.99	3.00	$29.95.
						7-24-42	Feonara	22.99	3.00	$29.95.
						7-24-42	Klex	22.99	3.00	$29.95.
						7-27-42	Davidson	22.99	3.00	$29.95.
						7-27-42	Gwathnex	22.99	3.00	$29.95.
						7-29-42	Roach	22.99	3.00	$29.95.

7-29-42	Baughart	$22.99	$3.00	$29.95.
7-29-42	Garnett	22.99	3.00	$29.95.
7-20-42	Cornforth	22.99	3.00	$29.95.
7-31-42	Davidson	22.99	3.00	$29.95.
7-31-42	Adams	22.99	3.00	$29.95.
7-31-42	Bumell	22.99	3.00	$29.95.
8- 4-42	Williams	22.99	3.00	$29.95.
8- 4-42	Harper	22.99	3.00	$29.95.
8- 7-42	Nogara	22.99	3.00	$29.95.
8- 9-42	Bess	22.99	3.00	$29.95.
8-11-42	Dingman	22.99	3.00	$29.95.
8-11-42	Moore	22.99	3.00	$29.95.
8-11-42	Marshall	22.99	3.00	$29.95.
8-12-42	Austin	22.99	3.00	$29.95.
8-13-42	Case	22.99	3.00	$29.95.
8-17-42	Golm	22.99	3.00	$29.95.
8-17-42	Carr	22.99	3.00	$29.95.
8-18-42	Masileh	22.99	3.00	$29.95.
8-18-42	Kerber	22.99	3.00	$29.95.
8-18-42	Hester	22.99	3.00	$29.95.
8-19-42	Carrett	22.99	3.00	$29.95.
8-20-42	Muncaster	22.99	3.00	$29.95.
8-21-42	Howell	22.99	3.00	$29.95.
8-24-42	Osman	22.99	3.00	$29.95.
8-24-42	Neyman	22.99	3.00	$29.95.
8-25-42	Sheffield	22.99	3.00	$29.95.
8-26-42	Lewis	22.99	3.00	$29.95.
8-26-42	Foster	22.99	3.00	$29.95.
8-26-42	Crump	22.99	3.00	$29.95.
8-26-42	Krause	22.99	3.00	$29.95.
8-26-42	March	22.99	3.00	$29.95.
8-26-42	Miller	22.99	3.00	$29.95.
8-26-42	Soari	22.99	3.00	$29.95.
8-26-42	Wymon	22.99	3.00	$29.95.

*Card reads "on pegs"	22.99
Pegs	3.50
	26.49

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-27-42	Apple	$22.99	$3.00	$29.95.
						8-27-42	Armstrong	22.99	3.00	$29.95.
						8-29-42	Boone	22.99	3.00	$29.95.
						8-29-42	Lybund	22.99	3.00	$29.95.
						8-29-42	Lady	22.99	3.00	$29.95.
						8-28-42	Haulis	22.99	3.00	$29.95.
						8-28-42	Xander	22.99	3.00	$29.95.
1259									206.01	
						8-28-42	Serbert	22.99	3.00	$29.95.
						8-28-42	Burth	22.99	3.00	$29.95.
						8-28-42	Donnelly	22.99	3.00	$29.95.
						8-28-42	Williams	22.99	3.00	$29.95.
						8-28-42	Hocher	22.99	3.00	$29.95.
						8-28-42	Gargano	22.99	3.00	$29.95.
						8-28-42	Helmer	22.99	3.00	$29.95.
						8-28-42	Nouse	22.99	3.00	$29.95.
						8-28-42	Stern	22.99	3.00	$29.95.
						8-28-42	Cleanes	22.99	3.00	$29.95.
						8-28-42	Merrill	22.99	3.00	$29.95.
						8-28-42	Hawkins	22.99	3.00	$29.95.
						9-3-42	Goldsmith	22.99	3.00	$29.95.
						9-3-42	Richmond	22.99	3.00	$29.95.
						7-20-42	Fox	22.99	3.00	$29.95.
						7-20-42	Hair	22.99	3.00	$29.95.
						7-21-42	Demday	29.99	10.00	$29.95.
						7-21-42	Neceto	29.99	10.00	$29.95.

7-21-42	Reid	$29.99			$29.95.
7-21-42	Thomas	29.99	$10.00		$29.95.
7-22-42	Venson	22.99	3.00		$29.95.
7-22-42	Chamber	22.99	3.00		$29.95.
7-22-42	Whiting	22.99	3.00		$29.95.
7-22-42	Gilmer	22.99	3.00		$29.95.
7-22-42	Bruckman	22.99	3.00		$29.95.
7-23-42	Martin	22.99	3.00		$29.95.
7-22-42	D'Areaiglo	22.99	3.00		$29.95.
7-23-42	Cox	22.99	3.00		$29.95.
7-24-42	Baumart	22.99	3.00		$29.95.
7-24-42	Hulse	22.99	3.00		$29.95.
7-24-42	Francal	22.99	3.00		$29.95.
7-24-42	Lugh	22.99	3.00		$29.95.
7-24-42	Jones	22.99	3.00		$29.95.
7-24-42	Daneman	22.99	3.00		$29.95.
7-25-42	Tompkins	22.99	3.00		$29.95.
7-27-42	McFarlan	22.99	3.00		$29.95.
7-27-42	Melion	22.99	3.00		$29.95.
7-27-42	Schutz	22.99	3.00		$29.95.
7-27-42	Schmidt	22.99	3.00		$29.95.
7-28-42	Mittius	22.99	3.00		$29.95.
7-28-42	Burklin	22.99	3.00		$29.95.
7-28-42	Schroeder	22.99	3.00		$29.95.
7-28-42	Stockel	22.99	3.00		$29.95.
7-28-42	Stockell	22.99	3.00		$29.95.
7-29-42	Lynch	22.99	3.00		$29.95.
7-29-42	Dairs	22.99	3.00		$29.95.
7-29-42	Raden	22.99	3.00		$29.95.
7-29-42	Kirby	22.99	3.00		$29.95.
7-29-42	Merztone	22.99	3.00		$29.95.
7-29-42	Blankenship	22.99	3.00		$29.95.
7-30-42	Wenshall	22.99	3.00		$29.95.
7-31-42	Connelly	22.99	3.00		$29.95.
7-31-42	Allhouse	22.99	3.00		$29.95.
7-31-42	Leech	22.99	3.00		$29.95.
8-3-42	Kirty	22.99	3.00		$29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-3-42	Lee	$22.99	$3.00	$29.95.
						8-3-42	Conolly	22.99	3.00	29.95.
						8-4-42	Spitzer	22.99	3.00	29.95.
						8-5-42	Steinberger	22.99	3.00	29.95.
						8-5-42	Kirchgessner	22.99	3.00	29.95.
						10-20-42	Bumgarner	*33.00	12.01	29.95.
				(4/6)		10-20-42	Calvert	*29.50	9.51	29.95.
						7-10-42	Cererck	22.99	3.00	29.95.
						7-10-42	Milazeck	22.99	3.00	29.95.
						7-10-42	Hagan	22.99	3.00	29.95.
						7-10-42	Laughner	22.99	3.00	29.95.
						7-10-42	Domley	22.99	3.00	29.95.
						7-10-42	Terry	22.99	3.00	29.95.
						7-10-42	Perry	22.99	3.00	29.95.
						7-10-42	Sparshett	22.99	3.00	29.95.
									353.52	
1260										
						7-10-42	James	22.99	3.00	29.95.
						7-13-42	Stair	22.99	3.00	29.95.
						7-14-42	Canterberg	22.99	3.00	29.95.
						7-14-42	Army & Navy C. C.	22.99	3.00	29.95.
						7-13-42	Williams	22.99	3.00	29.95.
						7-13-42	Clatterbuck	22.99	3.00	29.95.
						7-13-42	Ziegenfus	22.99	3.00	29.95.
						7-13-42	Brown	22.99	3.00	29.95.
						7-13-42	Murphy	22.99	3.00	29.95.

7-13-42	Willis	22.99	3.00	29.95.
7-14-42	Black	22.99	3.00	29.95.
7-14-42	Tosh	22.99	3.00	29.95.
7-14-42	Eschen	22.99	3.00	29.95.
7-14-42	Feltwell	22.99	3.00	29.95.
7-14-42	McClary	22.99	3.00	29.95.
7-14-42	Rosh	22.99	3.00	29.95.
7-14-42	Smilk	22.99	3.00	29.95.
7-14-42	Thompson	22.99	3.00	29.95.
7-14-42	La Marca	22.99	3.00	29.95.
7-15-42	Blakemore	22.99	3.00	29.95.
7-15-42	Hughes	22.99	3.00	29.95.
7-15-42	Fulton	22.99	3.00	29.95.
7-15-42	Herbert	22.99	3.00	29.95.
7-15-42	Lee	22.99	3.00	29.95.
7-16-42	Walker	22.99	3.00	29.95.
7-16-42	Tusada	22.99	3.00	29.95.
7-16-42	Kumble	22.99	3.00	29.95.
7-16-42	Gones	22.99	3.00	29.95.
7-16-42	Bassford	22.99	3.00	29.95.
7-16-42	Heffner	22.99	3.00	29.95.
7-17-42	Pope	22.99	3.00	29.95.
7-17-42	Horowitz	22.99	3.00	29.95.
7-17-42	Alte	22.99	3.00	29.95.
7-17-42	Davis	22.99	3.00	29.95.
7-20-42	Jericoe	22.99	3.00	29.95.
7-20-42	Beckey	22.99	3.00	29.95.
7-20-42	Tooller	22.99	3.00	29.95.
8-28-42	Cutter	22.99	3.00	29.95.
8-28-42	Taylor	22.99	3.00	29.95.
8-31-42	Overstreet	22.99	3.00	29.95.
8-31-42	Williams	22.99	3.00	29.95.
8-31-42	Harding	22.99	3.00	29.95.
8-31-42	Siady	22.99	3.00	29.95.

*Card reads "on legs"	22.99
Legs	3.50
	26.49

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Overcharges	Price on submitted ceiling price list
						9-1-42	Kramer	$22.99	$3.00	$29.95.
						9-1-42	Kanokus	22.99	3.00	29.95.
						9-1-42	Reed	22.99	3.00	29.95.
						9-1-42	Daugherty	22.99	3.00	29.95.
						9-1-42	Harding	22.99	3.00	29.95.
						9-1-42	Kedwell	22.99	3.00	29.95.
						9-1-42	Downs	22.99	3.00	29.95.
						9-1-42	Kent	22.99	3.00	29.95.
						9-1-42	Johnson	22.99	3.00	29.95.
						9-1-42	McGinnis	22.99	3.00	29.95.
						9-1-42	Fahnechinsck	22.99	3.00	29.95.
						9-2-42	Behnnes	22.99	3.00	29.95.
						9-2-42	Kornegay	22.99	3.00	29.95.
						9-2-42	Allan	22.99	3.00	29.95.
						9-2-42	Steel	22.99	3.00	29.95.
						9-2-42	Stokes	22.99	3.00	29.95.
						9-2-42	Littleton	22.99	3.00	29.95.
						9-2-42	Abel	22.99	3.00	29.95.
						9-2-42	Welsh	22.99	3.00	29.95.
						9-3-42	Conley	22.99	3.00	29.95.
						9-3-42	Hotel Roosevelt	22.99	3.00	29.95.
						9-3-42	Burkett	22.99	3.00	29.95.
						9-3-42	Briney	22.99	3.00	29.95.
						9-3-42	McCloud	22.99	3.00	29.95.
						9-3-42	Nutter	22.99	3.00	29.95.
						9-3-42	Ackerman	22.99	3.00	29.95.
						9-3-42	Sunfaid	22.99	3.00	29.95.
						9-3-42	Steinbaker	22.99	3.00	29.95.

					9-3-42	Whitehurst	22.99	3.00	29.95.
					9-3-42	Hunter	22.99	3.00	29.95.
								219	
1261			3/1 Box spring—1020.	19.99	9-4-42	McEddy	22.99	3.00	$29.95.
					9-4-42	Patterouski	22.99	3.00	$29.95.
					9-4-42	McDrudd	22.99	3.00	$29.95.
					9-4-42	Bowers	22.99	3.00	$29.95.
					9-4-42	Hauger	22.99	3.00	$29.95.
					9-4-42	Fast	22.99	3.00	$29.95.
					9-4-42	Tuce	22.99	3.00	$29.95.
					9-5-42	Mauceli	22.99	3.00	$29.95.
					9-5-42	Nye	22.99	3.00	$29.95.
					9-5-42	MacCatherine	22.99	3.00	$29.95.
					9-5-42	O'Malley	22.99	3.00	$29.95.
					9-5-42	Beacon	22.99	3.00	$29.95.
					9-5-42	Wolff	22.99	3.00	$29.95.
					9-5-42	DeLashnutt	22.99	3.00	$29.95.
					9-5-42	Donid	22.99	3.00	$29.95.
					9-5-42	Megee	22.99	3.00	$29.95.
					9-8-42	Bones	22.99	3.00	$29.95.
					9-8-42	Ullman	22.99	3.00	$29.95.
					9-8-42	McEnddy	22.99	3.00	$29.95.
					8-6-42	Pushe	22.99	3.00	$29.95.
					8-6-42	Horton	22.99	3.00	$29.95.
					8-6-42	Lalsputgh	22.99	3.00	$29.95.
					8-7-42	Sommer	22.99	3.00	$29.95.
					8-7-42	Reynolds	22.99	3.00	$29.95.
					8-7-42	Hanwood	22.99	3.00	$29.95.
					8-7-42	Wilson	22.99	3.00	$29.95.
					8-7-42	King	22.99	3.00	$29.95.
					8-7-42	Lynott	22.99	3.00	$29.95.
					8-10-42	Turner	22.99	3.00	$29.95.
					8-10-42	Derr	22.99	3.00	$29.95.
					8-10-42	Nellis	22.99	3.00	$29.95.
					8-10-42	O'Dell	22.99	3.00	$29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-10-42	Evans	$22.99	$3.00	$29.95.
						8-10-42	Marchis	22.99	3.00	$29.95.
						8-10-42	Myer	22.99	3.00	$29.95.
						8-10-42	Evans	22.99	3.00	$29.95.
						8-10-42	Warche	22.99	3.00	$29.95.
						8-10-42	Prager	22.99	3.00	$29.95.
						8-10-42	O'Leary	22.99	3.00	$29.95.
						8-10-42	Dennis	22.99	3.00	$29.95.
						8-10-42	Edwards	22.99	3.00	$29.95.
						8-11-42	Werthenn	22.99	3.00	$29.95.
						8-11-42	Wilson	22.99	3.00	$29.95.
						8-11-42	Page	22.99	3.00	$29.95.
						8-14-42	Menowitz	22.99	3.00	$29.95.
						8-14-42	Hess	22.99	3.00	$29.95.
						8-14-42	Faley	22.99	3.00	$29.95.
						8-14-42	Bailey	22.99	3.00	$29.95.
						8-14-42	Firlon	22.99	3.00	$29.95.
						8-14-42	Weney	22.99	3.00	$29.95.
						8-14-42	Crawley	22.99	3.00	$29.95.
						8-14-42	Rotpeki	22.99	3.00	$29.95.
						8-14-42	Manley	22.99	3.00	$29.95.
						8-14-42	Houpe	22.99	3.00	$29.95.
						8-14-42	Hayh	22.99	3.00	$29.95.
						8-14-42	Willcut	22.99	3.00	$29.95.
						8-17-42	Scop	22.99	3.00	$29.95.
						8-17-42	Evans	22.99	3.00	$29.95.
						8-18-42	Patterson	22.99	3.00	$29.95.
						8-18-42	Proctor	22.99	3.00	$29.95.

						8-18-42	Fuller	22.99	3.00	$29.95.
						8-18-42	Wells	22.99	3.00	$29.95.
						8-19-42	Gobbich	22.99	3.00	$29.95.
						8-19-42	Seltzer	22.99	3.00	$29.95.
						8-19-42	Lee	22.99	3.00	$29.95.
						8-19-42	Carrell	22.99	3.00	$29.95.
						8-20-42	Holmes	22.99	3.00	$29.95.
						8-20-42	Krasner	22.99	3.00	$29.95.
						8-21-42	Beline	22.99	3.00	$29.95.
						8-21-42	Drecht	22.99	3.00	$29.95.
						8-21-42	Williams	22.99	3.00	$29.95.
						8-21-42	Cushman	22.99	3.00	$29.95.
						8-21-42	Wardlow	22.99	3.00	$29.95.
									219	
1262						8-21-42	Doner	22.99	3.00	$29.95.
						8-24-42	White	22.99	3.00	$29.95.
						8-24-42	Haynes	22.99	3.00	$29.95.
						8-24-42	Stevenson	22.99	3.00	$29.95.
						8-24-42	Phelps	22.99	3.00	$29.95.
						8-24-42	Hancock	22.99	3.00	$29.95.
						8-24-42	Hargett	22.99	3.00	$29.95.
						8-24-42	Goswell	22.99	3.00	$29.95.
						8-24-42	Taylor	22.99	3.00	$29.95.
						8-24-42	Clawer	22.99	3.00	$29.95.
						9- 4-42	Werthner	22.99	3.00	$29.95.
						9- 5-42	Norwich	22.99	3.00	$29.95.
						9-29-42	Lade	22.99	3.00	$29.95.
						9-29-42	Wheeler	29.50	9.51	$29.95.
						10-10-42	Coune	29.50	9.51	$29.95.
						8-24-42	McGlade	29.50	9.51	$29.95.
						7-15-42	Darling	22.99	3.00	$29.95.
						7-17-42	Basken	22.99	3.00	$29.95.
						7-24-42	Hood	22.99	3.00	$29.95.
						7-24-42	From	22.99	3.00	$29.95.
						7-24-42	Groome	22.99	3.00	$29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						7-24-42	Cox	$22.99	$3.00	$29.95.
						8- 3-42	Allison	22.99	3.00	$29.95.
						8- 5-42	Sansbury	22.99	3.00	$29.95.
						8-10-42	Mendell	22.99	3.00	$29.95.
						8-10-42	Comotto	22.99	3.00	$29.95.
						8-18-42	Mertz	22.99	3.00	$29.95.
						8-21-42	Smith	22.99	3.00	$29.95.
						8-21-42	Geddes	22.99	3.00	$29.95.
						8-25-42	Wagner	22.99	3.00	$29.95.
						8-27-42	Wiggin	22.99	3.00	$29.95.
						8-27-42	Bridekamp	22.99	3.00	$29.95.
						8- 4-42	Winter	22.99	3.00	$29.95.
						8- 5-42	Bowman	22.99	3.00	$29.95.
						8- 6-42	Mellon	22.99	3.00	$29.95.
						8- 6-42	Herricks	22.99	3.00	$29.95.
						8- 6-42	Deming	22.99	3.00	$29.95.
						8- 7-42	Beavor	22.99	3.00	$29.95.
						8-11-42	Burnelli	22.99	3.00	$29.95.
						8-10-42	Schaeffer	22.99	3.00	$29.95.
						8-10-42	Strobel	22.99	3.00	$29.95.
						8-10-42	Bureau	22.99	3.00	$29.95.
						8-11-42	Brown	22.99	3.00	$29.95.
						8-11-42	Sorrell	22.99	3.00	$29.95.
						8-11-42	Thomas	22.99	3.00	$29.95.
						8-11-42	Raring	22.99	3.00	$29.95.
						8-12-42	Fisher	22.99	3.00	$29.95.
						8-13-42	Garrett	22.99	3.00	$29.95.
						8-13-42	Blee	22.99	3.00	$29.95.

8-13-42	Hendricks	$22.99	$3.00	$29.95.
8-13-42	Caludal	22.99	3.00	$29.95.
8-14-42	Baliskiel	22.99	3.00	$29.95.
8-14-42	Mercer	22.99	3.00	$29.95.
8-14-42	Sharpe	22.99	3.00	$29.95.
8-14-42	Ford	22.99	3.00	$29.95.
8-14-42	Langan	22.99	3.00	$29.95.
8-14-42	Molthens	22.99	3.00	$29.95.
8-14-42	Stith	22.99	3.00	$29.95.
8-17-42	Kah	22.99	3.00	$29.95.
8-18-42	Taylor	22.99	3.00	$29.95.
8-18-42	DuBois	22.99	3.00	$29.95.
8-18-42	Roper	22.99	3.00	$29.95.
8-18-42	Halloran	22.99	3.00	$29.95.
8-19-42	Carpel	22.99	3.00	$29.95.
8-20-42	Cowpe	22.99	3.00	$29.95.
8-21-42	Daugherty	22.99	3.00	$29.95.
8-21-42	Rosanoff	22.99	3.00	$29.95.
8-21-42	Daugherty	22.99	3.00	$29.95.
8-21-42	Mattsman	22.99	3.00	$29.95.
8-21-42	Leonard	22.99	3.00	$29.95.
8-24-42	Dirickson	22.99	3.00	$29.95.
8-24-42	Kindey	22.99	3.00	$29.95.
			238.53	
8-24-42	Lennard	22.99	3.00	$29.95.
8-24-42	Schlossing	22.99	3.00	$29.95.
8-25-42	Baum	22.99	3.00	$29.95.
8-25-42	Bing	22.99	3.00	$29.95.
8-26-42	Hauff	22.99	3.00	$29.95.
8-26-42	Oarter	22.99	3.00	$29.95.
8-27-42	Ogle	22.99	3.00	$29.95.
8-28-42	Griffin	22.99	3.00	$29.95.
8-28-42	Brown	22.99	3.00	$29.95.
8-29-42	Jacques	22.99	3.00	$29.95.
8-28-42	Lurie	22.99	3.00	$29.95.

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PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-28-42	Priestly	$22.99	$3.00	$29.95.
						8-28-42	Leni	22.99	3.00	$29.95.
						8-31-42	Goss	22.99	3.00	$29.95.
						8-31-42	Rose	22.99	3.00	$29.95.
						8-31-42	Friedman	22.99	3.00	$29.95.
						8-31-42	Willkie	22.99	3.00	$29.95.
						8-31-42	Crane	22.99	3.00	$29.95.
						9- 1-42	Hancock	22.99	3.00	$29.95.
						9- 1-42	Hortin	22.99	3.00	$29.95.
						9- 2-42	Brag	22.99	3.00	$29.95.
						9- 3-42	O'Pemhewes	22.99	3.00	$29.95.
						9- 3-42	Reed	22.99	3.00	$29.95.
						9- 3-42	Friedman	22.99	3.00	$29.95.
						9- 4-42	Richards	22.99	3.00	$29.95.
						9- 5-42	Robinson	22.99	3.00	$29.95.
						9- 8-42	Banks	22.99	3.00	$29.95.
						9- 9-42	Foote	22.99	3.00	$29.95.
						9-17-42	Burton	22.99	3.00	$29.95.
						9-24-42	Lerie	22.99	3.00	$29.95.
						9-26-42	Rudaks	22.99	3.00	$29.95.
						9-28-42	Karing	22.99	3.00	$29.95.
						10- 1-42	Noless	22.99	3.00	$29.95.
						10-13-42	Osman	22.99	3.00	$29.95.
						10-29-42	Coleman	22.99	3.00	$29.95.
						7- 9-42	Patty	22.99	3.00	$29.95.
						7- 9-42	Hertzen	22.99	3.00	$29.95.
						7- 9-42	Kley	22.99	3.00	$29.95.
						7- 9-42	Overfeld	22.99	3.00	$29.95.

7-10-42	Kaplan	22.99	3.00	$29.95.
7-10-42	Don	22.99	3.00	$29.95.
7-10-42	Ortinan	22.99	3.00	$29.95.
7-10-42	McClode	22.99	3.00	$29.95.
7-10-42	Nesline	22.99	3.00	$29.95.
7-13-42	Parkerson	22.99	3.00	$29.95.
7-13-42	Wallenberg	22.99	3.00	$29.95.
7-13-42	Pemberton	22.99	3.00	$29.95.
7-13-42	Albert	22.99	3.00	$29.95.
7-16-42	Saunders	22.99	3.00	$29.95.
7-22-42	Weldman	22.99	3.00	$29.95.
7-22-42	Norris	22.99	3.00	$29.95.
7-13-42	Roberts	22.99	3.00	$29.95.
7-13-42	Erickson	22.99	3.00	$29.95.
7-23-42	Kelly	22.99	3.00	$29.95.
7-24-42	Hubbert	22.99	3.00	$29.95.
7-29-42	Rowes	22.99	3.00	$29.95.
7-29-42	Houze	22.99	3.00	$29.95.
7-29-42	Hottznan	22.99	3.00	$29.95.
7-29-42	Keys	22.99	3.00	$29.95.
7-30-42	Holzman	22.99	3.00	$29.95.
7-30-42	Perme	22.99	3.00	$29.95.
7-31-42	Hanann	22.99	3.00	$29.95.
7-31-42	Lehr	22.09	3.00	$29.95.
8- 3-42	Carroll	22.99	3.00	$29.95.
8- 3-42	Parsons	22.99	3.00	$29.95.
8- 3-42	Lyons	22.99	3.00	$29.95.
8- 3-42	Underwood	22.99	3.00	$29.95.
8- 4-42	Lee	22.99	3.00	$29.95.
8- 5-42	Miller	22.99	3.00	$29.95.
8- 6-42	Brosh	22.99	3.00	$29.95.
9- 6-42	Herrichs	22.99	3.00	$29.95.
8- 7-42	Leonhard	22.99	3.00	$29.95.
			216	
8- 7-42	Roller	22.99	3.00	$29.95.

PLAINTIFF'S EXHIBIT 31 —Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-10-42	Braum	$22.99	$3.00	$29.95
						8-10-42	Enger	22.99	3.00	29.95
						8-10-42	DeHart	22.99	3.00	29.95
						8-10-42	Spiry	22.99	3.00	29.95
						8-10-42	Kerr	22.99	3.00	29.95
						8-10-42	Nichols	22.99	3.00	29.95
						8-10-42	Mer	22.99	3.00	29.95
						8-11-42	Allman	22.99	3.00	29.95
						8-11-42	Monson	22.99	3.00	29.95
						8-12-42	Menkin	22.99	3.00	29.95
						8-12-42	Reimes	22.99	3.00	29.95
						8-12-42	Chevalie	22.99	3.00	29.95
						8-12-42	Murray	22.99	3.00	29.95
						8-12-42	Schmidt	22.99	3.00	29.95
						8-13-42	Lovejoy	22.99	3.00	29.95
						8-14-42	Bolchak	22.99	3.00	29.95
						8-14-42	Neria	22.99	3.00	29.95
						8-14-42	Bucholz	22.99	3.00	29.95
						8-14-42	McGregor	22.99	3.00	29.95
						8-14-42	Langan	22.99	3.00	29.95
						8-14-42	Collins	22.99	3.00	29.95
						8-14-42	Ogden	22.99	3.00	29.95
						8-14-42	Hannon	22.99	3.00	29.95
						8-14-42	Benes	22.99	3.00	29.95
						8-14-42	Chevolier	22.99	3.00	29.95
						8-17-42	Leonnard	22.99	3.00	29.95
						8-17-42	Boggs	22.99	3.00	29.95
						8-17-42	Hutchison	22.99	3.00	29.95

8-18-42	Yocum	22.99	3.00	29.95.
8-19-42	Mathews	22.99	3.00	29.95.
8-19-42	Crysler	22.99	3.00	29.95.
8-19-42	Crane	22.99	3.00	29.95.
8-19-42	McWilliams	22.99	3.00	29.95.
8-20-42	Funn	22.99	3.00	29.95.
8-20-42	Broome	22.99	3.00	29.95.
8-20-42	Elliott	22.99	3.00	29.95.
8-21-42	Starbach	22.99	3.00	29.95.
8-21-42	Waterman	22.99	3.00	29.95.
8-21-42	Smith	22.99	3.00	29.95.
8-21-42	Gray	22.99	3.00	29.95.
8-21-42	Nacha	22.99	3.00	29.95.
8-24-42	Hopkins	22.99	3.00	29.95.
8-24-42	Poole	22.99	3.00	29.95.
8-24-42	McGlade	22.99	3.00	29.95.
8-24-42	Sevart	22.99	3.00	29.95.
8-25-42	Mitchell	22.99	3.00	29.95.
8-25-42	Volkstorf	22.99	3.00	29.95.
8-25-42	Tuckerberry	22.99	3.00	29.95.
8-25-42	Wallovoro	22.99	3.00	29.95.
8-26-42	Hildebrand	22.99	3.00	29.95.
8-26-42	Heald	22.99	3.00	29.95.
8-26-42	Smith	22.99	3.00	29.95.
8-26-42	Garwood	22.99	3.00	29.95.
8-26-42	Strasser	22.99	3.00	29.95.
8-26-42	Idal	22.99	3.00	29.95.
8-26-42	Swindley	22.99	3.00	29.95.
8-27-42	Trost	22.99	3.00	29.95.
8-27-42	Walker	22.99	3.00	29.95.
8-27-42	Stenger	22.99	3.00	29.95.
8-28-42	Bobskill	22.99	3.00	29.95.
8-28-42	Traynor	22.99	3.00	29.95.
8-28-42	Brownley	22.99	3.00	29.95.
8-29-42	Allen	22.99	3.00	29.95.
8-28-42	Jensen	22.99	3.00	29.95.
8-28-42	Wanant	22.99	3.00	29.95.

PLAINTIFF'S EXHIBIT 31—Continued

March sales						Sales after May 18				
March delivery date	Customer	Sales check No.	Factory and style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
						8-28-42	Cohen	$22.99	$3.00	$29.95.
						8-28-42	Mullican	22.99	3.00	29.95.
						8-28-42	Lenario	22.99	3.00	29.95.
						8-28-42	Muckham	22.99	3.00	29.95.
						8-28-42	Thorogood	22.99	3.00	29.95.
1265									213.	
						8-28-42	Booley	22.99	3.00	$29.95.
						8-28-42	Watson	22.99	3.00	$29.95.
						8-28-42	Kellerby	22.99	3.00	$29.95.
				4/4 Box spring: (632) (592)		9-5-42	Menkz	22.99	3.00	$29.95.
						9-16-42	Shirk	22.99	3.00	$29.95.
						9-18-42	Fay	22.99	3.00	$29.95.
						9-21-42	Halper	22.99	3.00	$29.95.
				Box spring (on legs).		9-5-42	Mills	22.99	3.00	$29.95.
						9-19-42	Fulton	22.99	3.00	$29.95.
						9-19-42	Murray	22.99	3.00	$29.95.
						9-24-42	Crane	22.99	3.00	$29.95.
						10-2-42	Kramer	22.99	3.00	$29.95.
						10-15-42	Hunt	22.99	3.00	$29.95.
						9-17-42	Burney	22.99	3.00	$29.95.
						9-29-42	Halloran	22.99	3.00	$29.95.
						10-24-42	Dorrett	22.99	3.00	$29.95.
3-13-42	W. C. Wiley	17157-6	649-616	4/6 Bed 1439 Rose.	79.95	7-7-42	Tadlock	89.95	10.00	Not listed.

3–4–42	Val. Wall	10988–41	608–80–1½	Duo Bed maple.	59. 50	6–6–42	Land	59. 95	7. 45	Not listed.
						7–24–42	Mayer	59. 95	7. 45	Not listed.
1266						7–29–42	Dick	59. 95	7. 45	Not listed.
3– 4–42	William Rice	10990–41	60–6210—489 finish.	2/9 utility cot.	39. 95	9–10–42	Gabson	44. 95	5. 00	$39.99.
						9–10–42	Roberts	49. 95	10. 00	$39.99.
						9–10–42	Bressenor	44. 95	5. 00	$39.99.
						9–22–42	Palburg	44. 00	4. 05	$39.99.
3– 2–42	Carlos Campbell.	15186–12	159–978	3/1 Box spring —1020 (4/4).	19. 99	10–9–42	Dukhate	29. 99	10. 00	$29.95.
						7–21–42	Demday	29. 99	10. 00	$29.95.
						7–21–42	Neceto	29. 99	10. 00	$29.95.
						7–21–42	Reid	29. 99	10. 00	$29.95.
						7–21–42	Thomas	29. 99	10. 00	$29.95.
						10–20–42	Bumgarner	*33. 00	12. 01	$29.95.

*Card reads "on legs" 22.99
legs 3.50
26.49

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PLAINTIFF'S EXHIBIT 33

THE HECHT COMPANY

Merchandise Not Sold in March and Not Appearing on Any Ceiling Price List by October 10, 1942

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling price
23	47–269	Sofa Bed	95080 Mauve	5–42	$62.50	$62.50	12881	
31	10	Sofa Bed	104 Blue Wine	8– 5–42	59.95	59.95	31303	
31	14	Sofa Bed	Red	8– 5–42	29.99	29.99	31303	
31	14	Sofa Bed	Blue Tap	7–27–42		34.99		
					29.99	29.99	31302	
						[1] 39.95		
						[2] 27.00		
						[3] 34.95		
			Wine Tap			29.95		
			Fenmore Blue		29.95	27.00		
					29.99	29.99		
						39.99		
31	26	Sofa Bed				27.00		
60	7–903	Sofa Bed	Wine	8– 5–42	59.98	58.98	31303	
60	2504	Sofa Bed	1–101	8– 4–42	125.00	125.00	04279	
60	A673	Love Seat	G363	5– 5–42	79.50	79.50	12880	
129	3201	Studio	I283	8– 5–42	79.50	79.50	04279	
			1247	7– 7–42	34.95	34.95	12926	
			1249					
129	4266	Studio	145A					
			1393	7– 2–42	44.95	44.95	12926	
			1394	7– 7–42				
129	4271	Studio	1395					
			1013 Sq Metal	9–10–42	39.95	39.95	12926	
			1150		39.95	39.95		
			1151		39.95	39.95		

159	1119	Mod. Lounge	1356	9- 2-42	39.95	39.95	
159	1135	Mod. Lounge	1380	9-10-42	39.95	39.95	
159	1127	U. L. Lounge	4113	9-22-42	59.95	59.95	04322
177	KK333G-343	Sleep Chair	4825	9-22-42	74.50	74.50	04322
			4567	9- 1-42	69.75	69.75	1149
177	33G-343	Sleep Chair	A236/	5- 8-42	32.50	32.50	12847
307	25	Studio	2221			39.99	
			2904	5-23-42	32.50	29.99	12847
307	25	Studio	C15	9- 1-42	25.00	39.95	85490
			Wine				
307	45	Studio	C17	9- 1-42	25.00	39.95	60681
			Green				
			F23	8-27-42	29.95	39.95	12846
			F24			37.00	
			F25			39.95	
837	21367	Sofa	3163	8- 5-42	39.95	39.95	
			3165		39.95	44.95	04276
			3073		39.95	44.95	
			3075		39.95	44.95	
60	1032					44.95	
	Special	Springs on Legs	Grey	7- 7-42	18.95	19.95	04279
60	1032	Springs	Grey	8- 4-42	14.45	15.95	24026
60	1032	A/O Springs	Grey	8- 3-42	14.95	15.95	24026
60	1072	2/10 Springs	Grey	7-27-42	16.95	19.95	04278
60	1073	2/10 Springs	Grey	7-27-42	16.95	18.95	04278
364	#2	2/6 GF & Pad	Grey	10- 3-42	12.95	14.95	(4)
364	176	3/1 Springs	Grey	8-14-42	8.95	9.95	(4)
364	#3	3/6 GF & Pad					
		Inner Springs	Grey	10- 3-42	16.95	24.95	(4)
364	Lotus	416 Springs	Grey	9- 1 42	9.00	9.95	05859
858	1032	4/6 Springs	Blue	10- 1-42	5.00	11.00	34926
159	978	4/4 Box Springs	606	3- 4-42	19.99	22.95	None
159	978	3/1 Box Springs	610	3- 4-42	19.99	22.99	(6)

[1] 5 sales. [2] 13 sales. [3] 1 sale. [4] No bill per Mr. Levinson. [5] From bill. [6] None given.

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Dept. 60

PLAINTIFF'S EXHIBIT 34

THE HECHT COMPANY

Items Not Sold in March But Sold at a Higher Price After May 18, 1942, Than on Submitted Ceiling Price List

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling price
31	14	Sofa Bed	Wine	8- 5-42	$39.99	$39.99	31303	$39.95
31	14	Sofa Bed	Blue	8- 5-42	39.98	39.99	31303	39.95
						44.95		
						44.98		
						44.99		
60	3770	Chair Bed	Walnut and Wine	6-12-42	29.95	69.75	04859	29.95
177	76½	Duncan Studio	3617	7- 9-42	69.95	69.95	04867	64.50

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PLAINTIFF'S EXHIBIT 20-A

THE HECHT COMPANY

Analysis of Sales Checks

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Over-charge	Submitted ceiling price list
3/20/42	D. H. Johnson.	27-4062	13254-1	4/6 Bed, Lime Oak.	$17.00					
3/20/42	D. H. Johnson.	27-4097	13254-1	Vanity, Lime Oak.	36.00	6/15/42	Redlish	$38.00	$2.00	N. L.
						6/16/42	Dill	38.00	2.00	
						6/26/42	Barbly	38.00	2.00	
						7/14/42	Tully	39.00	3.00	
						8/14/42	McClade	38.00	2.00	
						10/2/42	Junghous	38.00	2.00	
3/2/42	Richard Bowie.	27-3730	15942-7	Chest Walnut.	33.95	6/16/42	Clouit	39.95	6.00	$37.95
3/2/42	Richard Bowie.	3777	15942-7	Vanity	46.00	7/22/42	Clofuit	37.95	4.00	
									4.00	Exchange
3/2/42	Richard Bowie.	731-2235	15942-7		7.95	6/17/42	Bahrens	50.		$50.00
		27-3762	15942-7	4/6 Walnut Bed.	20.00	7/17/42	Hartley	11.00	4.00	
						6/16/42	Closeiselt	22.00	2.00	22.00
						6/17/42	Bahrens	22.00	2.00	
3/12/42	Herbert Tucker.	27-3507, 3508	15970-26	Mhg. Dresser.	35.00	5/27/42	Smart	43.00	8.00	43.00
						5/28/42	Suroff	43.00	8.00	
						6/19/42	Brackett	39.00	4.00	
						6/19/42	Field	39.00	4.00	
						6/20/42	Roswell	39.00	4.00	
						6/29/42	Stout	43.00	8.00	
						7/14/42	Pritchard	43.00	8.00	
						7/15/42	Sparshott	40.00	5.00	
						7/16/42	Calio	40.00	5.00	

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
						7/28/42	Perticon	$40.00	$5.00	
						8/11/42	King	40.00	5.00	
						8/12/42	Field	39.00	4.00	
						8/19/42	Wilson	40.00	5.00	
						8/21/42	Field	39.00	4.00	
						8/31/42	Stout	43.00	8.00	
						9/1/42	Feltwold	40.00	5.00	
						9/8/42	Gordon	40.00	5.00	
						9/29/42	Adams	43.00	8.00	
						9/29/42	McCary	40.00	5.00	
						9/30/42	Richter	40.00	5.00	
3/12/42	Herbert Tucker.	27-3507, 3508	15970-26	Mhg. Dresser.	$35.00	9/30/42	Jones	40.00	5.00	
						9/30/42	Brown	40.00	5.00	
						10/1/42	Stout	43.00	8.00	
						10/1/42	Walbridge	40.00	5.00	
3/31/42	Lowell A. Jones.	27-3534	13284-24	Chest on Chest.	28.95	10/5/42	Adams	43.00	8.00	
						5/23/42	Doyle	42.95	14.00	$42.95
						5/27/42	Smart	42.95	14.00	
						5/29/42	Supoff	42.95	14.00	
						6/9/42	Ward	42.95	14.00	
						6/9/42	Brackett	38.95	10.00	
						6/19/42	Fields	38.95	10.00	
						6/29/42	Guskey	42.95	14.00	
						6/29/42	Comstock	42.95	14.00	
						7/1/42	Kahn	42.95	14.00	
						7/24/42	Williams	42.95	14.00	
						8/29/42	Roberts	42.95	14.00	
						9/1/42	Fultwell	42.95	14.00	

						9/21/42	Adams	42.95	14.00	
						10/14/42	Fehr	42.95	14.00	
3/21/42	Herbert J. Tucker.	27-3562, 3562½	15970-26	4/6 Bed Mhg 3/3 Bed Mhg	20.00	5/27/42	Smart	24.00	4.00	24.00
						5/29/42	Suroff	24.00	4.00	24.00
						6/1/42	Howell	24.00	4.00	
						6/19/42	Brackett	22.00	2.00	
						7/24/42	Williams	22.00	2.00	
						7/24/42	Vinlcohn	22.00	2.00	
						7/29/42	Perticone	22.00	2.00	
						7/29/42	Roberts	22.00	2.00	
						8/11/42	King	22.00	2.00	
						8/11/42	Hiberty	22.00	2.00	
						8/19/42	Wilson	22.00	2.00	
						8/19/42	Pierson	22.00	2.00	
						8/20/42	Oldham	22.00	2.00	
						9/5/42	Talley	28.42	6.42	
						9/8/42	Gordon	22.00	2.00	
						9/21/42	Adious	24.00	4.00	
						9/29/42	McCray	22.00	2.00	
						9/30/42	Jones	22.00	2.00	
						9/30/42	Brown	22.00	2.00	
						10/1/42	Walbridge	22.00	2.00	
						10/5/42	Adams	24.00	4.00	
						10/8/42	Cone	24.00	4.00	
						5/23/42	Doyle	24.00	4.00	
						6/9/42	Ward	24.00	4.00	
3/21/42	Herbert J. Tucker.	27-3562½	15970-26	3/3 Bed Mhg	20.00	6/9/42	Fields	22.00	2.00	
						6/20/42	Roswell	22.00	2.00	24.00
						7/15/42	Sparshott	22.00	2.00	
						9/19/42	Harley	22.00	2.00	
						9/30/42	Richter	22.00	2.00	
						10/8/42	Dunmore	24.00	4.00	
						10/14/42	Trelk	24.00	4.00	
3/9/42	Jack W. Noell	27-16628	15979-16	4/6 Bed Mhg	18.00	7/12/42	Clay	20.00	2.00	Not on list
						7/18/42	Lewis	20.00	2.00	

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/19/42	Marco Campa.	27-3995	15961-49	Bench	$6.95	9/9/42	Brown	$8.95	$3.00	$6.95
3/13/42	Marion Wilson.	27-3909	13426-47	Dresser, Walnut.	36.00	10/5/42	Burleigh	38.00	2.00	Not listed
3/26/42	Earl M. Schara.	27-4009	11259-39	Dresser	36.00	6/20/42	Scott	38.00	2.00	Not listed
						7/6/42	McGlade	38.00	2.00	
						8/6/42	McGlade	38.00	2.00	
3/14/42	Carl Russ	27-3522	15962-45	Chest	32.95	8/24/42	Fleming	38.00	2.00	
1286						10/8/42	Dummore	38.75	5.85	Not listed
3/24/42	W. R. Polen	27-2409	12350-37	Lime Oak Dresser.	40.00	5/27/42	Terum	44.00	4.00	44.00
						5/28/42	Fant	44.00	4.00	
						6/8/42	Terum	44.00	4.00	
3/3/42	Dennis	746-4110	15971-40	Chest on Chest.		6/9/42	Ross	44.00	4.00	
						7/1/42	Fisher			22.00
3/24/42					20.00	5/28/42	Ststoie			28.95
						5/28/42	Branch			
						5/28/42	Douglas			
						5/29/42	Reid			
3/9/42	Rebecca Libby.	746-4110	15971-40	Chest on Chest.	26.95	6/3/42	Douglas			
						6/6/42	Nedley	28.95	2.60	
						6/8/42	Baldwell	28.00	1.05	
						6/11/42	Finno			
						9/11/42	Qullar			
						7/1/42	Naylor			
						7/2/42	Moulder			

						7/3/42	Moreland				
						7/6/42	Talbert	28. 95	2. 00		
						7/8/42	Suellar				
						7/8/42	Moulder				
						7/9/42	Branch				
						7/10/42	Price	55. 90			
						7/10/42	Manning	28. 95	2. 00		
						7/17/42	Basolo	28. 95	2. 00		
						7/21/42	Thompson	28. 95	2. 00		
						7/28/42	Sisk	28. 95	2. 00		
						7/29/42	Burke	28. 95	2. 00		
						8/6/42	Warment	28. 95	2. 00		
						8/11/42	Downs	28. 95	2. 00		
						8/11/42	Farber	28. 95	2. 00		
						8/14/42	Thomas	28. 95	2. 00		
						8/27/42	Kelley	28. 95	2. 00		
						9/1/42	Wetherby	28. 95	2. 00		
						9/2/42	Queen	28. 95	2. 00		
						10/11/42	Jorden	28. 95	2. 00		
3/9/42	Raymond B. Fuller.	746–4200A	13423–37	Mpl. Dresser.	31. 00	6/1/42	Stunnan	33. 00	2. 00	Not listed.	
						6/2/42	Carey	33. 00	2. 00		
						6/2/42	Gioianette	33. 00	2. 00		
						6/3/42	Tappe	33. 00	2. 00		
						6/9/42	Van Dager	33. 00	2. 00		
						6/9/42	Hiyou	33. 00	2. 00		
						6/10/42	Morgan	33. 00	2. 00		
						6/12/42	Stelger	33. 00	2. 00		
						6/13/42	Barth	33. 00	2. 00		
						6/15/42	Bingham	33. 00	2. 00		
						6/20/42	Dinger	33. 00	2. 00		
						6/26/42	Courtney	33. 00	2. 00		
						6/27/42	Stuhman	33. 00	2. 00		
						6/30/42	Coote	33. 00	2. 00		
						7/1/42	Fisher	33. 00	2. 00		
						7/17/42	Basola	33. 00	2. 00		
						7/21/42	Thompson	33. 00	2. 00		
						7/22/42	Smith	33. 00	2. 00		

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
						7/24/42	Wilson	$33.00	$2.00	
						7/29/42	Cutten	33.00	2.00	
						7/29/42	Burke	33.00	2.00	
						7/30/42	Henderson	33.00	2.00	
						8/4/42	Vargo	33.00	2.00	
						8/5/42	Kirchglassner	33.00	2.00	
						8/7/42	Horton	33.00	2.00	
						8/11/42	Downs	33.00	2.00	
						8/11/42	Farber	33.00	2.00	
						8/27/42	Kelley	33.00	2.00	
						9/1/42	Withendy	33.00	2.00	
						9/5/42	Nolly	33.00	2.00	
						9/15/42	Norris	33.00	2.00	
						9/15/42	Brenis	33.00	2.00	
3/21/42	Norman Brown	746-B100	13253-8	Dresser	$20.95	9/16/42	Bowie	33.00	2.00	
						5/19/42	Flynn			
						5/19/42	Christ			
						5/19/42	Wander			
						5/20/42	Cojad			
						5/21/42	Woshowaski			
						5/21/42	Parris			
						5/21/42	Mattheus			
						5/22/42	Simione			
						5/22/42	Matyka			
						5/22/42	Fanis			
						5/22/42	Blasteir			
						5/23/42	Sany			
						5/23/42	Starr			
						5/25/42				

							5/25/42	Cico		
							5/25/42	Murray		
							5/27/42	Smith		
							5/27/42	Westcott		
							5/28/42	King		
							5/28/42	Duncon		
							5/28/42	Hawkins		
							6/1/42	Bueling		
							6/13/42	Mayo		
							6/13/42	Woodward		
							6/15/42	Shipherd		
							6/15/42	Gordon		
							6/20/42	Barney		
							7/15/42	Bakey		
							7/15/42			
							7/17/42	Williams		
							7/23/42	Nordek		
							7/27/42	Crossey		
							7/23/42	Brooks		
							8/14/42	Francus		
							8/14/42	Fox		
							8/17/42	Awthelm		
							8/18/42	Levene		
							8/19/42	McCarthy		
							9/1/42	O'Leary		
							9/1/42	Coates		
1287										
3/14/42	Edmond V.	746–4322	15949–47		18 00					
	Bullock.	4322½			18 00					
3/9/42	Molly Scap	746–4123	15977–40	4/6 Bed	13 00		6/5/42	Balm	14 00	1 00
				3/3 Bed	13 00		6/10/42	Doyle	14 00	1 00
							6/13/42	Martin	14 00	1 00
							6/13/42	Hunter	14 00	1 00
							6/13/42	Underwood	14 00	1 00
							6/19/42	Beck	14 00	1 00
							6/20/42	Baker	14 00	1 00

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and style	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
						6/23/42	Keltz	$14.00	$1.00	
						6/25/42	Taylor	14.00	1.00	
						6/26/42	Lady	14.00	1.00	
						6/29/42	Wills	14.00	1.00	
						6/30/42	White	14.00	1.00	
						7/1/42	Wills	14.00	1.00	
						7/3/42	Enright	14.00	1.00	
						7/6/42	Grant	14.00	1.00	
						7/8/42	Dwigby	14.00	1.00	
						7/29/42	Baddick	14.00	1.00	
						8/7/42	Rucker	14.00	1.00	
						8/13/42	Umansky	14.00	1.00	
						8/20/42	Cole	14.00	1.00	
						8/20/42	Finn	14.00	1.00	
						8/27/42	Hawkins	14.00	1.00	
						9/4/42	Nye	14.00	1.00	
						9/16/42	Bowie	14.00	1.00	
						9/28/42	Lonack	14.00	1.00	
						10/10/42	Sobolunski	14.00	1.00	
						5/29/42	Foy	14.00	1.00	
3/2/42	Eliz Chapman.	746-4100	15942-13	Dresser	$24.00	8/11/42	Reidel	14.00	1.00	
						5/29/42	Strother	26.00	2.00	
3/17/42	Irving Aselrod.	746-A4222, A4222½	11240-9	4/6 Bed, 3/3 bed.	------	8/6/42	Walker	------	------	$17.00
3/3/42	Orvis Schmidt	746-A4610	15965-20	Ch on ch	39.95	9/11/42	Chisholm	45.00	5.05	33.95
3/4/42	John Crittenden.	541-2010	15956-1	472 bench	12.95	7/24/42	Lunnach	14.00	1.05	10.95

3/4/42	S. M. Cowell	541-2200½	15954-16	4/6 bed	32.00	10/16/42	Wood	34.00	2.00	
						10/21/42	McKinley	34.00	2.00	34.00
3/25/42	E. F. Dwyer	541-2201½	11259-10	Bed	32.00	5/25/42	Coleman	34.00	2.00	34.00
						10/19/42	Wood	34.00	2.00	
3/20/42	Herman Schimel.	541-2201	11230-27	Chest	56.95	5/26/42	Ham's	60.95	4.00	60.95
						10/9/42	Thomas	60.00	3.05	
						10/9/42	Bromedy	60.00	3.05	
3/19/42	Harry Brown	541-2202 2206	13474-46	Mhg. dresser	65.00	5/20/42	Mann	76.00	11.00	76.0
						7/4/42	Brown	70.00	5.00	
						7/17/42	Grabes	70.00	5.00	
						9/4/42	Holcomb	70.00	5.00	
3/20/42	HermanSchimel.	541-2203½	11230-27	3/3 mhg. bed	37.00	10/9/42	Wood	39.00	2.00	39.00
3/25/42	Leo Chladt	541-2203	11257-18	Mhg.powder table.	34.95	9/12/42	Matchett	39.95	5.00	39.95
3/20/42	Jay T. Carpenter.	541-2200	11226-24	Mhg. dresser.	59.00	5/28/42	Markham	63.00	4.00	63.00
						5/29/42	Syoff	63.00	4.00	
						6/5/42	Eare	63.00	4.00	
						6/16/42	Spicknall	63.00	4.00	
						6/25/42	Collins	63.00	4.00	
3/4/42	H. L. Harter	171-681-4	15969-1	Dresser	60.00	6/19/42		64.00	4.00	64.00
						7/29/42	Dougherty	64.00	4.00	
						8/14/42	Melozza	64.00	4.00	
						8/14/42	Marks	64.00	4.00	
						8/28/42	Stewart	64.00	4.00	
						9/28/42	Lambert	64.00	4.00	
						10/17/42	Vazzruv	64.00	4.00	
3/23/42	Elva Lewis	171-681-62	15961-39	Bed	32.00	10/22/42	Powell	33.00	1.00	32.00
3/23/42	Otto Rossonan.	171-1598-6	11256-26	P. vera 4/6 bed.	32.00	5/22/42	Leach	34.00	2.00	Not listed
3/3/42	F. W. Corwin	171-1525-10	11260-44	Chest	56.95	5/22/42	Wallan	64.95	8.00	
3/19/42	Jas. H. Brown	248-1560¾	15945-8	Mhg. vanity	50.00	10/13/42	Dix	54.00	4.00	Not listed
3/14/42	Clyde Caviness.	293-6001	13375-18	Chest	41.95	5/28/42	Dwir	45.95	4.00	Not listed
						6/2/42	Wilcher	45.95	4.00	
						6/10/42	Nielson	45.95	4.00	
						7/7/42	Cokonite	45.95	4.00	
						7/10/42	Don	45.95	4.00	

PLAINTIFF'S EXHIBIT 20–A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Over-charge	Submitted ceiling price list
						7/14/42	Madeley	$45.95	$4.00	
						7/14/42	Derdy	45.95	4.00	
						7/21/42	Schotter	45.95	4.00	
						7/22/42	Lightner	45.95	4.00	
						7/24/42	Kiplon	45.95	4.00	
						7/24/42	Demerat	45.95	4.00	
						7/27/42	Lowell	45.95	4.00	
						7/30/42	Clark	45.95	4.00	
						7/31/42	Peterson	45.95	4.00	
						8/7/42	Saunders	45.95	4.00	
						8/14/42	Benes	45.95	4.00	
						8/25/42	Mitchell	45.95	4.00	
						8/26/42	Crump	45.95	4.00	
						8/31/42	Wells	45.95	4.00	
						9/3/42	Peping	45.95	4.00	
						9/11/42	Dunn	45.95	4.00	
						9/11/42	Lowell	45.95	4.00	
						9/14/42	Talbat	45.95	4.00	
						9/17/42	McCoskey	45.95	4.00	
						9/21/42	Castro	45.95	4.00	
						9/22/42	Broderick	45.95	4.00	
						9/28/42	Nagnmas	45.95	4.00	
3/26/42	Virginia Attleman.	382–3667	13251–22	Hanging mirror.	$19.95	10/6/42	Johnson	45.95	4.00	
						7/17/42	Miller	22.95	3.00	Not listed
3/14/42	Clyde Caviness.	293–6000	13375–18	4/6 bed	26.00	5/28/42	Divir	28.00	2.00	Not listed
						6/5/42	Autin	28.00	2.00	
						7/7/42	Cakonite	28.00	2.00	
						7/10/42	Don	28.00	2.00	

							7/14/42	Madeley	28. 00	2. 00		
							7/21/42	Schotter	28. 00	2. 00		
							7/22/42	Lightmer	28. 00	2. 00		
							7/27/42	Orvea	28. 00	2. 00		
							7/27/42	Lovell	28. 00	2. 00		
1288							7/30/42	Clark	28. 00	2. 00		
							7/31/42	Peterson	28. 00	2. 00		
							8/7/42	Saunders	28. 00	2. 00		
							8/14/42	Benes	28. 00	2. 00		
							8/20/42	Pepino	28. 00	2. 00		
							8/25/42	Mitchell	28. 00	2. 00		
							8/26/42	Crump	28. 00	2. 00		
							8/28/42	Huskas	28. 00	2. 00		
							9/8/42	Har	28. 00	2. 00		
							9/9/42	Wells	28. 00	2. 00		
							9/16/42	Lovell	28. 00	2. 00		
							10/16/42	McCasky	28. 00	2. 00		
							10/22/42	Broderick	28. 00	2. 00		
3/14/42	Clyde Caviness	293–6000	13375–18	Bench	11. 95		5/28/42	Divir	12. 95	1. 00	Not listed	
							6/5/42	Autin	12. 95	1. 00		
							7/3/42		12. 95	1. 00		
							7/10/42	Don	12. 95	1. 00		
							7/22/42	Lightner	12. 95	1. 00		
							8/14/42	Benes	12. 95	1. 00		
							9/10/42	Brooker	12. 95	1. 00		
							9/11/42	Dunn	14. 95	3. 00		
							9/11/42	Lovell	12. 95	1. 00		
							9/17/42	McCoskny	12. 95	1. 00		
							9/21/42	Castro	12. 95	1. 00		
3/6/42	Veronique Pyfrom.	745–6808	15964–41	Ch on ch maple.	25. 00							
3/2/42	G. G. Milne, Jr.	745–5001	11236–10	Maple chest	23. 95							
3/2/42	Robt. Burrows.	745–2104	15948–49	3/3 bed 4/6 bed 3/3 bed	12. 00 12. 00		5/26/42					$12. 00

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/14/42	Margaret Purks.	745-6802	15946-1	Maple vanity.	$19.95	6/4/42	Lloyd	$25.30	$5.35	Not listed
						6/4/42	Caktee	25.30	5.35	
						6/4/42	Blackwell	25.30	5.35	
						6/6/42	Haniman	25.30	5.35	
						8/7/42	Karookum	30.00	10.05	
						10/6/42	Sheily	32.00	12.05	
3/3/42	H. Vincent Olson.	745-5120	13123-31	Chestrobe	18.00	5/29/42	Zinkler	39.95	21.95	Not listed
3/5/42	John Macosh	745-5104	15968-48	4/6 bed	11.00	6/26/42	West	12.00	1.00	$12.00
						9/23/42	Halse	12.00		
2/27/42	Chapman	746-4100		Dresser	24.00	5/29/42	Stuthers	26.00	2.00	26.00
3/3/42	F. J. Gould	171, 151-11	15970-7	Buffet	65.00	5/23/42	Priddy	68.00	3.00	68.00
						5/28/42	Farrell	68.00	3.00	
						6/1/42	Roberts	68.00	3.00	
3/9/42	McIntyre, B. D.	171, 151-3	15977-33	Dining rm. table.	45.95	5/22/42	Magruder	48.95	3.00	46.95
						6/20/42	Barton	48.95	3.00	
						6/26/42	Hobbs	48.95	3.00	
						7/30/42	Schulz	48.95	3.00	
						8/7/42	Jasinonski	48.95	3.00	
						8/18/42	Hulman	48.95	3.00	
						8/24/42	Dunn	48.95	3.00	
						9/3/42	Brown	48.95	3.00	
						9/8/42	Delgado	48.95	3.00	
						9/10/42	Osborne	48.95	3.00	
						10/2/42	Bruckman	48.95	3.00	
						10/9/42	Much	48.95	3.00	
						10/23/42	Shogart	48.95	3.00	

3/26/42	Eversole, John S.	171, 151-1	13251-25	Buffet	56.00	6/30/42	Thomas	59.00	3.00	56.00
3/31/42	John J. Harmon.	415-307		Table	29.00					
3/2/42	Carlos Campbell.	415-317	15967-10	Sower, Mhg						
3/2/42	Carlos Campbell.	415-317	15967-10	Buffet, Mhg						
3/2/42	Carlos Campbell.	415-317	15967-10	Table, Mhg	39.00	5/21/42	Rose			40.00
						23	Johnson			
						26	Williams			
						6/12/42	Pittingill			
						6/12/42	La Due			
						23	Rickie			
						29	Forman			
						10/9/42	Carter			
						10/14/42	Robinson			
						10/15/42	Jones			
						10/17/42	Wolfe			
						10/17/42	Altman			
						10/21/42	Riley			
3/3/42	Beatrice Cohen.	415-327	11242-26	Side chair	7.00	5/21/42	Rose	8.00	1.00	8.00
						6/10/42	Howell	8.00	1.00	
						6/12/42	Pittingill	8.00	1.00	
						6/12/42	Grier	8.00	1.00	
						6/22/42	Gorab	8.00	1.00	
						6/23/42	Howard	8.00	1.00	
						6/26/42	Hobbs	8.00	1.00	
						6/29/42	Forman	8.00	1.00	
						7/22/42	Mac	8.00	1.00	
						8/21/42	Smith	8.00	4.00	
	Beatrice Cohen.	415-327	11242-26	China	35.00	5/22/42	Magruder	39.00	4.00	39.00
						6/22/42	Gorab	39.00	4.00	
						7/10/42	Emersons	39.00	4.00	
						8/4/42	Cattrell	39.00	4.00	
						8/4/42	Rooks	39.00	4.00	

PLAINTIFF'S EXHIBIT 20-A—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
	Beatrice Cohen.	415-327	11242-26	Arm chair	$8.00	6/10/42	Howell	$9.00	$1.00	$9.00
						6/12/42	Pitiglio	9.00	1.00	
						6/12/42	La Due	9.00	1.00	
						6/22/42	Gorab	9.00	1.00	
3/2/42	Geo. R. Slaughter.	538-1050, 1052	11254-34	5 Pc. dining room suite, maple.	34.95	6/29/42	Forman	9.00	1.00	
						5/28/42	Johnson	39.95	5.00	Not listed
						9/10/42	Dyer	39.95	5.00	
						9/14/42	Beller	39.95	5.00	
						9/15/42	Sciarille	39.95	5.00	
						9/15/42	Purks	39.95	5.00	
						9/22/42	Palberg	39.95	5.00	
						10/5/42	Anderson	39.95	5.00	
						10/6/42	Ikerd	39.95	5.00	
						10/24/42	McMinn	39.95	5.00	

PLAINTIFF'S EXHIBIT 21

THE HECHT COMPANY

DEPARTMENT 69—CASE GOODS FURNITURE

521075—43——34

Schedule of March Sales Which Establish the Base Ceiling Price and Sales After May 18 1942, Above This Price

March sales						Sales after May 18				
March delivery date]	Customer	Sales check No.	Factory & style	Article	Price	After May 18, 1942	Customer	Price	Over-charges	Price on submitted ceiling price list
3-3-42	F. W. Corwin	11260-44	171—1525-10	Chest	$56.95	5-22-42	Wallan	$64.95	$8.00	$60.95
3-9-42	B. D. McIntyre	15977-33	171—151-3	Dining room table	45.95	5-22-42	Magruder	48.95	3.00	46.95
						6-20-42	Barton	48.95	3.00	46.95
						6-26-42	Hobbs	48.95	3.00	46.95
						7-30-42	Schulz	48.95	3.00	46.95
						8-7-42	Jasinonski	48.95	3.00	46.95
						8-18-42	Hulman	48.95	3.00	46.95
						8-24-42	Dunn	48.95	3.00	46.95
						9-3-42	Brown	48.95	3.00	46.95
						9-8-42	Delgado	48.95	3.00	46.95
						9-10-42	Osborne	48.95	3.00	46.95
						10-2-42	Bruckman	48.95	3.00	46.95
						10-9-42	Much	48.95	3.00	46.95
						10-23-42	Shogart	48.95	3.00	46.95

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Dept. 69

PLAINTIFF'S EXHIBIT 22

THE HECHT COMPANY

Merchandise Not Sold in March and Not Appearing on Any Ceiling Price List by October 10, 1942

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sale	Confirmation
765	17	Side Chair	Maple	4-27-42	$4.00	$4.00	50880
171	721-5	China	Mhg. Veneer	7-18-42	53.00	53.00	42683
171	721-6	Server	Mhg. Veneer	7-10-42	25.00	25.00	42683
765	20	Ref. Table	Maple	6-18-42	22.95	21.95	230041
171	721-8	Side Chair	Mhg.	7-10-42	10.00		42683
171	721-11	Buffet	Mhg. Veneer	7-10-42	55.00		42683
765	36-175	5 Piece Dinette		9-8-42	28.88	29.95	31360
171	721-19	China	Mhg. Veneer	7-10-42	73.00	73.00	42683
171	721-85	Arm Chair	Mhg.	7-10-42	12.00		42683
292	865	Buffet	Maple	7-27-42	45.00	45.00	30023
292	865	China	Maple	7-27-42	60.00	60.00	30023
372	162½	Ext. Table	Lime Oak	4-28-42	34.95	34.95	09328
372	162	Side Chair	Coral Rose	4-28-42	9.00	9.00	09328
473	1012	Lime Oak—China		4-28-42	44.00	44.95	09328
473	1012	China	Lime Oak	7-27-42	27.05	27.05	09655
49	5051	Buffet	Lime Oak	7-16-42	21.95	21.95	09655
49	5051	Arm Chair	Blue	4-21-42	19.95	None	09326
49	5052	Side Chair	Blue	4-21-42	14.95	14.95	09326
49	5053	Arm Chair	Turq	3-31-42	14.95	15.00	09326
49	5054	Side Chair	Wine	3-31-42	14.95	14.95	09326
810	307-1	Side Chair	Wine	3-31-42	12.95	12.95	09326
810	307	Credenza Buffet		6-22-42	77.00		42631
810	307	Buffet		6-22-42	38.00		42631
810	307	China	Mhg. Veneer	6-22-42	47.00	47.00	42631
810	307	D. R. Table		6-22-42	40.00	40.00	42631
810	307	Server		6-22-42	22.00	22.00	42631

810	307	Arm Chair		6-22-42	12.00	12.00	42631
810	307	Side Chair		6-22-42	10.00	10.00	42631
810	317-1	Credenza Buffet		6-22-42	77.00	77.00	42633
810	317	Buffet		6-22-42	57.00		42633
810	317-1	Credenza China		6-22-42	77.00		42633
810	317	China	Mhg.	6-22-42	57.00	57.00	42633
810	317	D. R. Table		6-22-42	55.00	55.00	42633
810	317	Server	Mhg. Veneer	6-24-42	25.00	25.00	42633
810	317	Arm Chair		6-22-42	15.00	15.00	42633
65	1065	Buffet	Walnut Veneer	7-17-42	54.60		30047
65	1066	Buffet	Wal. Veneer and Green	7-24-42	59.00		30047
65	1065	China	Wal. Veneer and Green	7-17-42	53.95		30047
65	1065	Server	Wal. Veneer and Green	7-17-42	25.00		30047
65	1065	D. R. Table	Wal. Veneer and Green	7-17-42	40.00		30047
382	3602	Side Chair	Shadow Maple-White Leather	6-30-42	15.00	15.00	30029
65	1065½	D. R. Table	Wal. Veneer and Green	7-17-42	19.50		30047
65	1066	D. R. Table	Wal. Veneer and Green	7-17-42	50.00		30047
65	1065	Arm Chair	Walnut Red	7-23-42	12.00		30047
538	1050	Dinette Chair	Maple	7-27-42	6.50	6.50	42678
65	1065	Side Chair	Walnut Red	7-23-42	10.00		30047
65	1067	Side Chair	Lime Oak Rose Tap	7-17-42	10.00		30048
65	1067	Arm Chair	Lime Oak Rose Tap	7-17-42	12.00	12.00	30048
65	1067	Buffet	Lime Oak	7-17-42	54.00		30048
65	1067	China	Lime Oak	7-17-42	53.95		30048
65	1067	Server	Lime Oak	7-17-42	25.00		30048
65	1067	D. R. Table	Lime Oak	7-17-42	40.00		30048
65	1067½	D. R. Table	Lime Oak	7-17-42	45.00		30048
765	366	China	Solid Maple	3-16-42	39.95	39.95	30002
765	373	Ref. Table	Solid Maple	3-16-42	30.95	30.95	09354
65	1068	D. R. Table	Lime Oak	7-17-42	50.00		30048
65	1068	Buffet	Lime Oak	7-17-42	59.00		30048
765	375	Corner Cabinet	Maple	6-18-42	39.95	39.95	30002
394	E 970½	3-3 Bed	Mhg. and Maple Veneer	7-29-42			
394	E 971	Dresser Base	Mhg. and Maple Veneer	7-29-42		67.00	08919
429	4100	B. R. Bench	Mhg. or Gum	4-21-42		13.95	50882
429	4104	Dresser	Mhg. Veneer or Gum	4-18-42		40.00	50882
541	2360	Chest	Lime Oak	7-20-42			151038
746	A 300	Dresser	Maple	7-31-42		31.00	42627

PLAINTIFF'S EXHIBIT 22—Continued

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sale	Confirmation
1291	745 8016	Secretary	Maple	7-27-42	$24.95	$35.00	51031
						32.00	
745	8320	Chestrobe	Maple			28.00	
248	80	Vanity Base	Mah. Ven. and Gum	7-8-42	19.00	19.00	31375
		4-6 Bed		8-13-42		25.00	42641
		B. R. Bench		7-17-42		30.00	42643
	81	3-3 Bed		7-17-42		12.95	42643
	83	Dresser		9-22-42		38.00	42642
	1560	3-3 Bed		7-16-42		50.00	42641
746	A310	Ch on Ch	Solid Maple	10-2-42		22.00	09668
394	E917	BIR Chair	Damask, Mhg	10-10-42		32.00	42627
394	E1020	4-6 Bed	White Bir. and Maple	6-12-42		29.95	28399
422	9000	Vanity	Mhg. Ven. and Gum				31334
				7-23-42		33.00	51041
				8-4-42		37.00	
				9-19-42		37.00	
765	12	China	Maple	4-27-42	24.95	29.95	50880
						26.88	
765	17	Side Chair		4-27-42	3.50	4.00	50880
						6.00	
						5.15	
						5.00	
						4.50	
						5.00	
330	1306	Side Chair				5.00	
171	719-55	China	Mhg	4-25-42	5.00	5.95	
				5-13-42	58.00	63.00	50924
171	719-15	Side Chair	Mhg			49.00	
				5-13-42	10.00	10.00	50924
171	719-33	M-L Table	Mhg			11.00	
				5-14-42	42.95	49.95	50924

394	E2081	Server	Mhg.	9- 9-42	49.00	------		21269
765	801-803	5 Pc Dinette Set	Solid Maple	8-17-42	19.88	29.95		
						24.95		
382	3670	3-3 Bed	Maple	6-30-42	30.00	30.00		30031
382	3671	Chest of Drawers	Maple	6-30-42	57.95	59.95		30009
382	3673	Hand Mirror	Maple	6-30-42	18.00	18.00		30009
382	3674	Nite Table	Maple	6-30-42	24.95	24.95		30009
382	3676	B. R. Bench	Maple	6-30-42	12.95	12.95		30009
382	3678	Dresser Base	Maple	6-30-42	45.00	45.00		30009
382	3679	Chest desk	Maple	6-30-42	79.95	79.95		30009
382	3680	3-3 Bed	Maple	6-30-42	38.00	38.00		30009
697	765	Stool	Maple	4-25-42	8.95	9.95		50920
	766	Nite Table	Maple	8-12-42	19.95	19.95		30033
	810	3-3 Bed	Maple	4-30-42	27.00	27.00		
	815	Dresser	Maple	8-12-42	50.00	50.00		30034
		Chest	Maple	8-12-42	43.95	43.95		30034
		4-6 Bed	Maple	8-12-42	26.00	26.00		30034
		3-3 Bed	Maple	8-12-42	26.00	26.00		30034
	816	Nite Table	Maple	8-12-42	19.95	19.95		30034
		Vanity	Maple	8-12-42	50.00	50.00		30034
	830	4-6 Bed	Maple	8-12-42	31.00	31.00		30033
		3-3 Bed	Maple	8-12-42	31.00	31.00		30033
745	1108-80	Nite Table	Maple	7-27-42	7.95	8.00		42638
	1108-91	Nite Table	Maple	8-24-42	8.95	7.95		31337
	8001	Chest	Maple	6- 4-42	18.95	8.95		
						19.95		
745	8016	Secretary	Maple	7-27-42	24.95	35.00		51031
						32.00		
						28.00		
745	8320	Chestrobe	Maple	7- 8-42	19.00	19.00		31375
745	9103	Dresser	Maple	8-12-42	16.00	23.95		31337
						32.00		
745	9104	4-6 Bed	Maple	8-12-42	10.00	13.00		31337
		3-3 Bed	Maple	8-24-42	10.00	13.00		31337
	9106	Bench	Maple	8-24-42	6.95	6.95		"Excess"
	9116	Secy. Chest	Maple	8-25-42	29.00	36.95		31337
						19.00		
746	A307	Chest	Solid Maple	7- 3-42	27.95	15.00		42627

PLAINTIFF'S EXHIBIT [redacted]—Continued

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sale	Confirmation
						$18.00	
						16.47	
	A310	Chest on Chest	Maple	7-3-42	$32.00	23.95	
	328	Vanity				23.95	42627
	B500	Dresser	Solid Maple	9-2-42	31.00	24.50	
1292			Maple	9-2-42	38.00	31.00	42627
						38.00	42630
171	707-75	Arm Chair	14922 Blue White Mod. Oak	7-23-41	$8.50	$9.00	9664
473	4007	D. Table	Empire Oak	7-7-41	13.00	15.95	9666
765	18	Side Chair	Maple	4-27-42	4.00	5.00	50880
394	E764	Vanity	Nat. Maple	7-23-41	100.00	104.00	21260

Factory	Style	Article	Finish	Merchandise received	Date of sale	Sale price	Confirmation
745	16	Secretary	Maple	7-27-42	8-24-42	$24.95	51031-30044
745	9101	Chest	Maple	8-12-42	9-9-42	23.00	31337
	9108	Dresser	Maple	8-12-42	9-15-42	32.00	31337
	9104	3-3 Bed	Maple	8-24-42	9-17-42	13.00	31337
746	A328	Vanity	Maple	7-31-42	8-18-42	31.00	42627
	B422½	3-3 Bed	Maple	7-31-42	8-26-42	17.00	42627
	B500	Dresser	Maple	9-2-42	9-15-42	38.00	42630
	B507	Chest	Maple	9-2-42	9-15-42	29.95	42630
	B510	Chest on Chest	Maple	9-2-42	9-25-42	35.00	42630
	B520	4-6 Bed	Maple	9-2-42	No sale	22.00	42630
	B520½	3-3 Bed	Maple	9-2-42	No sale	22.00	42630
	B528	Vanity	Maple	9-2-42	9-17-42	38.00	42630

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PLAINTIFF'S EXHIBIT 23

Dept. 69

THE HECHT COMPANY

Items Not Sold in March But Sold at a Higher Price After May 18, 1942, Than on Submitted Ceiling Price List

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling price
171	251–3	M–L Table	Wal. Ven	7– 1–40	$46.95	$48.95	20251	$46.95
171	570–6	4–6 Bed	Mhg	5–20–41	30.00	38.00	24401	36.00
293	6000	Bench	Maple	8–10–42	12.95	14.95	31330	12.95
394	E–728	Bench	Mhg. 5080–1	7–18–41	14.95	17.95	21263	14.95
745	8	Ch on Ch	Maple	6– 4–42		25.00	30044	24.00
745	8002	Vanity	Maple	6– 4–42	18.00	26.95	30044	23.95
						21.00		
						25.00		
745	8003	Dresser	Maple	6– 4–42	18.00	26.95	30044	23.95
745	8004	3–3 Bed	Maple	6– 4–42	9.05	14.00	30044	13.00
745	8402	Vanity	Maple	9– 8–42	25.00	25.00	31375	31.00
745	8403	Dresser	Maple	9– 8–42	31.00	25.00	31375	31.00
						26.05		

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Dept. 69

PLAINTIFF'S EXHIBIT 24

THE HECHT COMPANY

New Merchandise Not Sold in March Appearing on Ceiling Price List at a Higher Price Than Early Sales of Items

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling Price
171	525–83Va, 525–43DR	Vanity	Mhg	8– 2–42	$58.00	$68.00	Odd Piece	$72.00
746	8004	4–6 Bed	Maple	6– 4–42	9.05	13.00	30044	13.00
765	10	Buffet	Maple	4–27–42	24.95	26.88	50880	29.95
765	11	Hutch	Maple	4–27–42	24.95	28.88		
745	8001	Chest	Maple	6– 4–42	18.95	26.88	50880	29.95
						21.00	30044	23.00
						19.95		
						19.45		
						18.00		
						23.00		
						13.00		
						16.95		
745	8008	Ch on Ch T	Maple	6– 4–42	25.00	22.00		
						17.95		
						13.00	30044	24.00
						15.00		
						18.00		
745	8402	Vanity	Maple	9– 8–42	25.00	22.95		
						26.05	31375	31.00
745	8403	Dresser	Maple	9– 8–42	31.00	25.00	31375	31.00
745	8404	3–3 Bed	Maple	9– 8–42	14.00	26.05		
745	8414	Desk Chest	Maple	9– 8–42	32.00	14.00	31375	17.00
745	8416	Secy. Chest	Maple	9– 8–42	35.00	19.00	31375	32.00
745	9101	Chest	Maple	8–12–42	13.95	19.00	31375	40.00
						23.00	31337	(1)
						23.95		

[1] Before delivery of any of these chests was made, 99 were sold at $13.95. When these orders were filled, the balance was sold for $23.00 and $23.95 each.

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PLAINTIFF'S EXHIBIT 36

THE HECHT COMPANY

Analysis of Sales Checks

OCTOBER 26, 1942

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Over-charge	Submitted ceiling price list
3/3/42	J. G. Grant	15973-23	592-646	Mhg. Commode	$11.00					
3/10/42	Randall Kramer	15976-12	813-64	D. L. Table, Walnut.	29.95	5-23-42	Sherkey	$39.95	$10.00	$39.95.
						6-1-42	Sherkey	39.95	10.00	
						6-22-42	Betts	39.95	10.00	
						7-17-42	Oneshick	39.95	10.00	
						7-27 42	Horton	39.95	10.00	
						7-28-42	Stewart	39.95	10.00	
3/9/42	C. R. Grabiel	15938-15	375-3829	Secretary, Mhg	39.95	7-13-42	Green	44.95	5.00	$39.95.
						7-21-42	Halling	44.95	5.00	
						7-27-42	Richter	44.95	5.00	
						10-1-42	Richter	44.95	5.00	
						10-6-42	Sanford	44.95	5.00	

OCTOBER 28, 1942

3/20/42	Eugene Mathis	15872-24382-3652		Chest, Maple	$54.95	7-3-42	Gallagher	$59.95	$5.00	$54.95.
3/12/42	Horace A. Duree	13233-19	592-715	Commode, Mhg., Veneer	10.88	6-18-42	Springer	12.95	2.07	$14.95.
						9-5-42	Metz	12.95	2.07	Walnut.
						9-5-42	Mack	12.95	2.07	592-715 only.
						10-3-42	Dennis	12.95	2.07	One on list.

PLAINTIFF'S EXHIBIT 36—Continued

OCTOBER 28, 1942—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/26/42	James Ronz	13278–1	592–7	Cocktail Table, Mhg.	$12.95	8–20–42	Payne	$14.95	$2.00	
						8–24–42	Riley	14.95	2.00	
3/16/42	J. A. Saunders	15979–43	592–64	Cocktail Table, Walnut.	12.95	5–29–42	Perkins	14.95	2.00	Not listed.
3/14/42	R. W. Yarbrough	15943–43	592–24	Cocktail Table, Walnut Mhg.	13.95	8–26–42	Rice	14.95	1.00	Not listed.
3/25/42	Raymond Lutman.	13278–27	592–780	Lamp Table, Walnut, Mhg.	12.95	5–22–42	Hamilton	13.95	1.00	Not listed.
						5–22–42	Bayell	13.95	1.00	Not listed.
						5–22–42	Payne C. Gaye.	13.95	1.00	Not listed.
						6–10–42	Thomas	13.95	1.00	Not listed.
						6–17–42	Simmons	13.95	1.00	Not listed.
						6–29–42	Baird	13.95	1.00	Not listed.
						7–10–42	Sauls	13.95	1.00	Not listed.
						7–29–42	Roberts	13.95	1.00	Not listed.
						8– 8–42	Runker	13.95	1.00	Not listed.
						8–10–42	Mason	13.95	1.00	Not listed.
						8–17–42	Gross	13.95	1.00	Not listed.
						10–22–42	Ruel lt	13.95	1.00	Not listed.
						5–19–42	Sulli an	13.95	1.00	Not listed.
						6–18–42	Selke	13.95	1.00	Not listed.
3/4/42	James Green	13457–13	592–1420	Table, Mhg., Walnut.	13.99	8–21–42	Hughes	14.99	1.00	Not listed.
						8–21–42	Sears	14.99	1.00	Not listed.
						8–24–42	Thompson	14.99	3.96	Not listed.
						8–28–42	Gatewood	14.99	3.96	Not listed.
						9–30–42	Lenar	14.99	3.96	Not listed.
						8–14–42	Heberly	17.95	3.96	Not listed.
						8–17–42	Alexander	17.95	3.96	Not listed.

						8-18-42	Foster	17.95	3.96	Not listed.
						8-18-42	Foster	17.95	3.96	Not listed.
						8-28-42	McMonad	14.99	3.96	Not listed.
						8-28-42	Lagunds	14.99	3.96	Not listed.
						8-28-42	Taylor	14.99	3.96	Not listed.
						8-31-42	Shiner	14.99	3.96	Not listed.
						9-29-42	Clarks	19.95	3.96	Not listed.
						10- 6-42	Jackson	17.95	3.96	Not listed.
						10-22-42	Imler	14.99	3.96	Not listed.
						8-18-42	Edsen	17.95	3.96	Not listed.
3/26/42	L. L. Townshend	13280-13	592-646	Commode, Mhg	11.00	5-20-42	Erickson	12.95		Not listed.
						5-29-42	Thomoson	12.95		Not listed.
						6- 9-42	Newlin	12.95	1.95	Not listed.
						6- 9-42	Johns	12.95	1.95	Not listed.
						6-15-42	Gad	12.95	1.95	Not listed.
						6-25-42	Zivanow	12.95	1.95	Not listed.
						6-24-42	Fahey	12.95	1.95	Not listed.
						7-13-42	Massick	12.95	1.95	Not listed.
						7-16-42	Zuano	12.95	1.95	Not listed.
						7-17-42	Hollinger	12.95	1.95	Not listed.
						7-28-42	Brown	12.95	1.95	Not listed.
						7-29-42	Bronstem	12.95	1.95	Not listed.
						7-19 42	Firaru	12.95	1.95	Not listed.
						8- 7-42	Harris	12.95	1.95	Not listed.
						8-10-42	Jirario	12.95	1.95	Not listed.
						8-14-42	Middelton	12.95	1.95	Not listed.
						8-17-42	Lee	12.95	1.95	Not listed.
						8-25-42	Marbimey	12.95	1.95	Not listed.
3/9/42	A. J. Morris	15976-8	592-771	Table	10.88	8- 3-42	Baker	13.95	3.07	Not listed.
						8-21-42	Nash	13.95	3.07	Not listed.
						8-26-42	Nasen	13.95	3.07	Not listed.
						9-14-42	Zeus	13.95	3.07	Not listed.
						9-29-42	Kennedy	13.95	3.07	Not listed.
						10- 2-42	Purcell	13.95	3.07	Not listed.
3/12/42	Ann Goodman	15976-17	592-719	End Table, Walnut.	12.95	6- 1-42	Paxton	14.95	2.00	Not listed.
						6-12-42	Hair	14.95	2.00	Not listed.
						6-13-42	Williams	14.95	2.00	Not listed.

PLAINTIFF'S EXHIBIT 36—Continued

OCTOBER 28, 1942—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
						6-25-42	Zevanom	$14.95	$2.00	Not listed.
						6-30-42	Albright	14.95	2.00	Not listed.
						6-26-42	Cutler	14.95	2.00	Not listed.
1311						5-28-42	Rowe	14.95	2.00	Not listed.
3/5/42	Preston Sage	15957-47	592- 776	Lamp table, walnut.	$12.95	10- 2-42	Hatee	14.95	2.00	$14.95.
3/19/42	Harter	13251-29	592-7799	Commode, walnut, mhg.	12.95	6-29-42	Arnett	14.95	2.00	13.95.
						10-26-42	Chinger	14.95	2.00	
						10-20-42	Atwater	13.95	1.00	
						5-23-42	Green	13.95	1.00	
						5-26-42	Taufer	13.95	1.00	
						6-29-42	Reamy	13.95	1.00	
						8-20-42	Wyne	13.95	1.00	
						9- 9-42	Maxwell	13.95	1.00	
						9-21-42	Elsminger	13.95	1.00	
						9-25-42	Willard	13.95	1.00	

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3/5/42	J. L. Frantz	15954-27	330-1366	Telephone set, wal	$10.95	5-22-42	Hoffman	$12.95	$2.00	$12.95.
						5-22-42	Welcher	12.95	2.00	
3/17/42	Benj. H. Pester	15962-15	789-x8	Wall rack, maple	3.99	6- 4-42	Wessel	4.99	1.00	Not listed.
						9- 9-42	Mack	4.99	1.00	Not listed.
						10- 6-42	Murray	4.99	1.00	Not listed.

3/14/42	B. D. McIntyre	15959–10	789–M10	Wall rack, mhg	5. 95	6– 2–42	Gailey	6. 95	1. 00	6.95.
						9–18–42	Collins	6. 95	1. 00	
						10– 3–42	Lann	6. 95	1. 00	
						10–20–42	Ethelson	6. 95	1. 00	
						10–21–42	Hensh	6. 95	1. 00	
3/27/42	Edwin Sessoms	13285–7	789–110	Wall rack, mhg	2. 50	5–25–42	Oflucher	2. 99	. 49	2.50.
						6– 5–42	Waters	2. 99	. 49	
						8– 7–42	Mitchell	2. 99	. 49	
						9–21–42	Raymond	2. 99	. 49	
						10– 3–42	Lamm	2. 99	. 49	
						10–15–42	Young	2. 99	. 49	
3/2/42	Lucy Peters	15969–43	789–131	Wall rack, mhg	8. 95	10– 5–42	Mills	9. 95	1. 00	Not listed.
						10–12–42	Duke	9. 95	1. 00	Not listed.
3/14/42	James Humphrey	15961–21	789–141	Wall rack, walnut	3. 99	8– 4–42	Faickney	4. 99	1. 00	
						8– 5–42	Gribs	4. 99	1. 00	
						8–13–42	Findley	4. 99	1. 00	
						8–14–42	Branign	4. 99	1. 00	
						8–17–42	Leach	4. 99	1. 00	
						8–18–42	Crismond	4. 99	1. 00	
						8–19–42	Gymmatto	4. 99	1. 00	
						8–19–42	Altheise	4. 99	1. 00	
3/20/42	Ralph Fornui	13251–43	789–734	May basket, wal., mhg.	5. 95	5–27–42	Geary	6. 95	1. 00	Not listed.
						9–23–42	Caukin	6. 95	1. 00	Not listed.
						10– 5–42	McCann	6. 95	1. 00	Not listed.
						10–15–42	McCarthy	6. 95	1. 00	Not listed.
						10–21–42	Seigal	6. 95	1. 00	Not listed.
						5–28–42	Gross	6. 95	1. 00	Not listed.
						6–24–42	Stevenson	6. 95	1. 00	Not listed.
						8– 7–42	Minor	6. 95	1. 00	Not listed.
						9– 1–42	Clary	6. 95	1. 00	Not listed.
						9–12–42	Holmes	6. 95	1. 00	Not listed.
						9–18–42	Anderson	6. 95	1. 00	Not listed.
						9–18–42	Coylin	6. 95	1. 00	Not listed.
3/19/42	J. M. Kookley	15944–1	867–F12	Cabinet, maple	22. 95	7–14–42	Curtiss	24. 95	2. 00	
						10– 6–42	Brooks	24. 95	2. 00	
						10–12–42	Crawford	24. 95	2. 00	
						10–21–42	Hutchins	24. 95	2. 00	

PLAINTIFF'S EXHIBIT 36—Continued

OCTOBER 29, 1942—Continued

Date of delivery	Customer	Sales check number	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/9/42	Robert Bell	13425–38	592–587	Lamp table, mhg., wal.	$5.00	6–13–42	Walker	$9.95	$3.88	Not listed.
						8–24–42	Nicklas	8.88	3.88	Not listed.
3/14/42	Lenora Green	13426–9	592–707	End table, mhg., wal.	12.95	8–25–42	Jordon	8.88	4.95	Not listed.
3/7/42	Edward J. Sloane	13230–23	130–503	Bookcase, maple	12.95	7–3–42	Marsh	14.95	2.00	$14.95.
						5–19–42	De Berry			
						5–29–42	Gessley	14.95	2.00	14.95.
						7–29–42	Thom	14.95	2.00	
						9–11–42	Michall	14.95	2.00	
3/14/42	James Humphrey	13425–45	188–681	Cocktail table, mhg.	12.95	9–14–42	Easly	14.95	2.00	
3/31/42	Eunice Clem	13268–33	188–1650	Cocktail table, wal.	11.00	10–1–42	Finch	14.95	2.00	
3/4/42	Jack Fullerton	15941–49	215–331	End table, wal	14.95	9–10–42	Dunderdale	14.95	2.00	
						8–25–42	Walton	12.95	1.95	Not listed.
						7–10–42	Alinski	15.95	1.00	Not listed.
						9–19–42	Acton	15.95	1.00	14.95.
						10–1–42	McDonnell	15.95	1.00	
3/29/42	Angelina Bakas	11259–43	215–335	Lamp table, mhg., wal.	12.95	10–2–42	Benjamin	15.95	1.00	
						10–7–42	Wendlunk	15.95	1.00	
3/29/42	Angelina Bakas	11259–43	215–396	Console table, mhg., wal.	24.95	10–20–42	Vasco	14.95	2.00	12.95.
3/4/42	John D. La Grandville.	15965–35	215–376	Coffee table, mhg., wal.	17.95	10–23–42	McMinn	29.95	5.00	
						5–25–42	Riegel	19.95	2.00	17.95.
						6–18–42	Johnson	19.95	2.00	
						7–15–42	Bhakdi	19.95	2.00	
						7–21–42	Corneal	19.95	2.00	
						8–14–42	Lojacoro	19.95	2.00	
						8–28–42	Van Alston	19.95	2.00	
						10–20–42	Vasco	19.95	2.00	
						6–30–42	Smiley	19.95	2.00	

						7- 9-42	Minty	19. 95	2. 00	
						7-17-42	Frances	19. 95	2. 00	
						7-24-42	Turner	19. 95	2. 00	
						7-28-42	Cavender	19. 95	2. 00	
3/4/42	John D. La Grandville.	13383-11	215-398	Nest of tables, wal., mhg.	27. 95	9-25-42	Van Hess	19. 95	2. 00	
1312						6- 8-42	Johnson	29. 95	2. 00	29.95.
						6-24-42	Kaplan	29. 95	2. 00	
						10-24-42	Wheatcroft	29. 95	2. 00	
3/2/42	E. W. Stewart	15942-12	867-F39	Cocktail table—Wheat.	15. 95	9-24-42	De Balt	17. 95	2. 00	Not listed.

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3/25/42	Choltile Trail	13279-4	867-F18	Bookcase, maple	$24. 95	8- 6-42	Blackburn	$29. 95	$5. 00	$24. 95.
						8-11-42	Dahl	29. 95	5. 00	
						8-21-42	Kipphart	29. 95	5. 00	
						9-23-42	Vaughn	29. 95	5. 00	
						10-15-42	Humphrey	29. 95	5. 00	
3/23/42	Charles Perry	11258-8	628-42	Knee-Hole Desk, Wal.	27. 95	10-27-42	Harris	29. 95	5. 00	
						9-26-42	Rhodes	29. 95	2. 00	Not listed.
						9-29-42	Rocksword	29. 95	2. 00	
						9-30-42	Price	29. 95	2. 00	
						10-12-42	Mitchell	29. 95	2. 00	
3/21/42	J. C. Bradbury	13251-38	628-68	Knee-Hole, Desk, Mhg.	24. 95	10-16-42	Jones	29. 95	2. 00	
						7-28-42	Patch	27. 95	3. 00	29. 95.
						8-11-42	Creel	27. 95	3. 00	
						10-12-42	Clingan	29. 95	5. 00	
						10-17-42	Sturges	29. 95	5. 00	
3/18/42	R. W. Yarbrough	15943-48	229-6299½	End Table, Wal	7. 99	6- 1-42	Gadd	14. 95	6. 96	Not listed.
						6- 4-42	Brown	9. 95	6. 96	
						7- 9-42	Marchant	9. 95	1. 96	
						7-19-42	Rheem	9. 95	1. 96	
3/26/42	Margaret E. Lewis.	15977-17	229-6557½	Lamp Table, Wal.	7. 99	8- 3-42	Pendleton	9. 95	1. 96	
						6-20-42	Marshal	9. 95	1. 96	Not listed.
						7-13-42	Edwards	9. 95	1. 96	
3/28/42	Lewis & Kline	15978-42	592-563	Commode, Wal	10. 88	7-14-42	Lasser	9. 95	1. 96	
						6-11-42	Burrows	12. 95	2. 07	
						7-16-42	Anthony	12. 95	2. 07	14. 95.
						9- 3-42	Schoonour	12. 95	2. 07	

PLAINTIFF'S EXHIBIT 36—Continued

OCTOBER 30, 1942—Continued

Date of delivery	Customer	Sales check number	Factory and style	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/3/42	Willma George	15957-37	592-6	Coffee Table, Mhg.	$10.88	10-20-42	Long	$12.95	$2.07	
						5-23-42	Snoufee	12.95	2.07	Not listed.
						5-26-42	Forney	12.95	2.07	
						5-29-42	Day	12.95	2.07	
						5-29-42	Lewis	12.95	2.07	
						6- 5-42	Frederick	12.95	2.07	
						6- 6-42	Carey	12.95	2.07	
						6- 9-42	Mordoch	12.95	2.07	
						7- 3-42	Katlett	14.95	2.07	
						7- 3-42	McDougall	14.95	4.07	Not listed.
						7-10-42	Chapman	12.95	2.07	
						7-13-42	Parsons	12.95	2.07	
						7-15-42	Delisi	12.95	2.07	
						8-14-42	Pelin	12.95	2.07	
						8-18-42	Cantrell	12.95	2.07	
						8-18-42	Gelting	12.95	2.07	
						8-18-42	Milten	12.95	2.07	
						8-28-42	Jones	12.95	2.07	
						9- 5-42	Bradley	12.95	2.07	
						9-12-42	Gebbhardt	12.95	2.07	
						9-18-42	Duda	12.95	2.07	
						9-19-42	Lyckis	12.95	2.07	
						9-19-42	Fries	12.95	2.07	
						9-21-42	Butts	12.95	2.07	
						9-21-42	Perry	12.95	2.07	
						9-21-42	Johnson	12.95	2.07	
						9-24-42	Gordey	12.95	2.07	
						9-25-42	Jennings	12.95	2.07	
						9-29-42	McDorman	12.95	2.07	
						9-29-42	Oldenburg	12.95		

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PLAINTIFF'S EXHIBIT 37

THE HECHT COMPANY

Items Sold on Which No Ceiling Prices Were Established

Factory	Style	Article	Finish	Merchandise received	Original	First sale	Confirmation No.
130	577	Ocs. Table	Maple	5-25-42	$10.95	$12.95	08904
375	3823	Secretary	Mhg. Ven	10- 2-42	34.95	49.95	30728
375	4310	Kneehole Desk		8-25-42	69.95	69.95	42667
592	801	Kneehole Desk		7-29-42	19.95	29.95	51005
628	68	Kneehole Desk	Walnut	3-22-42	24.95	29.95	08913
628	101	Kneehole Desk	Mhg	6- 3-42	29.95	29.95	08915
628	109	Secretary	Mhg	9-18-42	34.95		63985
628	109	Secretary	Walnut	9-18-42	34.95		63985
731	40	Breakfront	Mhg	4- 8-42	59.95		51531
731	41	Breakfront	Walnut	4- 8-42	59.95	69.95	51531
792	809	Desk	Mhg	7- 1-42	39.95	39.95	42670
215	318	Desk	Walnut	8-24-42	49.95		42671
215	320	Desk Bookcase	Walnut	9-16-42	69.95	69.95	09256
215	320	Desk Bookcase	Mhg	4-16-42	69.95	69.95	09256
215	341	Desk	Wal. Ven	3-13-42	59.95		44232
215	341	Desk Chest T	Mhg	3-12-42	59.95	59.95	44232
215	392	Kneehole Desk T	Mhg	9-16-42	49.95		63990
215	399	Kneehole Desk T	Mhg	8-17-42	24.95		42671
215	399	Kneehole Desk T	Walnut	8-17-42	24.95		42671
215	492	Desk T	Mhg	8-19-42	59.95	59.95	63991
215	492	Desk	Walnut	8-19-42	59.95	59.95	63991
350	7-461	Desk	Lime Oak	8- 7-42	39.95	39.95	42674
49	128	Side Chair	Mhg	3-31-42	10.95	10.95	09326
49	5048	Side Chair	Mhg	3-31-42	12.95	12.95	09326
49	5051	Arm Chair	Mhg	4-21-42	19.95		09326
49	5051	Side Chair		4-21-42	14.95	14.95	09326
49	5052	Arm Chair		3-31-42	15.00	14.95	09326
49	5053	Side Chair		3-31-42	14.95	14.95	09326
49	5054	Side Chair		3-31-42	12.95	12.95	09326
49	5068	China	Mhg	4-22-42	49.95		S.O.2000
171	721-3	D. R. Table	Mhg. Ven	7-10-42	44.95	44.95	42683

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PLAINTIFF'S EXHIBIT 13

THE HECHT COMPANY

Analysis of Sales Checks

OCTOBER 20, 1942

Date of delivery	Customer	Sales check No.	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted selling price list
3/6/42	Marc Peter, 2500 Que St. NW.	13426-40	731-318	Occ. Chair	$11.95	7/6/42	Monamaker			
3/12/42	Mr. Wesley Jaquith, 3020 Nelson Place SE.	13423-17	15-1820	Hi B. Chr	18.88	6/30/42	Domeraz	$24.95	$6.07	Not listed.
3/5/42	Joseph McDonough, 1105 C St. NW.	15954-7	157-3940	Club Chr	29.95	5/25/42	Gaskille	39.95	10.00	$29.95.
						6/3/42	Schroeder	39.95	10.00	
						7/9/42	Cadwell	39.95	10.00	
						7/14/42	Anderson	39.95	10.00	
						8/10/42	Grille	39.95	10.00	
						8/12/42	Jordan	39.95	10.00	
						8/18/42	Ebsen	39.95	10.00	
						9/1/42	Bendt	39.95	10.00	
3/21/42	Mrs. Robt. E. Lynch, 3217 Jocelyn St. NE.	15946-43	157-7732	Bbl. Chair	28.88	10/2/42	Oldenburg	39.95	10.00	
						5/23/42	Pitjold			
						6/23/42	Smackum			
						6/2/42	Drew			
						10/12/42	Stoutenburgh			
						10/19/42	Stoutenburgh			
3/11/42	Alex Price, 1477 Newton St. NW.	15969-13	157-1809	Club Chr	29.95	6/18/42	Simmons	34.95	5.00	Not listed.

3/16/42	Mrs. Duane Cherry, 4029 Beecher St. NW.	15946–11	157–1820	Chime Bbl. Chair.	18. 88	7/18/42	McKelvy			
						7/29/42	Roberts			
						7/31/42	Walker			
3/20/42	S. E. Perkins	13252–81	157–732, 82 Glendale.		17. 95	6/9/42	Dawn	22. 95	5. 00	Not liated.
3/9/42	Eliz Isaacson	15949–1	195–733	Tux Sofa	89. 95	5/28/42	Kittle	119. 95	30. 00	119.95.
						7/9/42	Halprin	119. 95	30. 00	
						7/31/42	Scanlon	119. 95	30. 00	
3/19/42	M. H. Hutchison.	13277	157–2990	Club Chair	19. 95	9/22/42	Willard	119. 95	30. 00	
				Beige		5/1/42	Rudley	24. 95	5. 00	24.95.
				Blue		5/7/42	Chanler	24. 95	5. 00	
						6/10/42	Perkin	24. 95	5. 00	
						6/26/42	Cole	24. 95	5. 00	
						6/29/42	Mueller	24. 95	5. 00	
						7/6/42	Johnson	24. 95	5. 00	
						7/15/42	Wiles	24. 95	5. 00	
3/10/42	Richard Chamberlin.	15956–21	157–9640	Wing Chair	28. 88	8/7/42	Sterns	24. 95	5. 00	
3/18/42	Kathleen Nygard.	13254–4	157–900	Plat rocker, rose glo-sheen.[1]	17. 95	10/2/42	Oldenburg			
						10/7/42	Smith			
						10/17/42	Bluss	22. 95	5. 00	22.95.
						10/17/42	Young	22. 95	5. 00	
						5/22/42	Prysterck	22. 95	5. 00	
						5/28/42	Hodgkin	22. 95	5. 00	
3/14/42	Dorothy Pritchard.	11238–44	195–434	Chesterfield Sofa.	89. 95	5/28/42	Sish	29. 00	12. 00	
						5/18/42	Mason	119. 95	30. 00	119.95.
						5/18/42	Wallis	119. 95	30. 00	
						5/25/42	Manning	119. 95	30. 00	
						7/29/42	Totsloi	119. 95	30. 00	
						8/12/42	Shorogood	119. 95	30. 00	
						8/26/42	Dworska	119. 95	30. 00	
3/24/42	Chas. Smith	13251–9	95–45750	2 pc. L/R Suite	89. 95	6/16/42	Grab	99. 95	10. 00	99.95.
						7/29/42	Brown	99. 95	10. 00	
						2/21/42	Hoffman	99. 95	10. 00	
						5/19/42	Goodhue	99. 95	10. 00	
						6/16/42	Pratt	99. 95	10. 00	

[1] Rose glo-sheen covered costs $10.65, other covers $9.90. Mr. Crone sets ceiling at $17.95 for both.

PLAINTIFF'S EXHIBIT 13—Continued

OCTOBER 20, 1942—Continued

Date of delivery	Customer	Sales check No.	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/21/42	Jas. Mierzwinski, 77 Hawaii Ave. NE.	15959-19	95-6300	2 Pc. L/R Suite	$139.95	9/23/42	Babcock	$159.95	$20.00	$159.95.
						10/10/42	Boyden	169.95	20.00	
						10/17/42	Noel	169.95	20.00	
						8/24/42	Quander	159.95	20.00	
						8/25/42	Boyd	159.95	20.00	
						8/28/42	Sandman	159.95	20.00	
3/3/42	A. F. Parson	15938-48	540-967	Lawson Back Club Chr. 1405—Blue Tapestry.		5/19/42	Ling			
						6/12/42	Wells			
						8/27/42	Drew			
3/7/42	Helen Jacobson	13468-15	540-962	Fan Chair	55.00	5/28/42	Myerson	79.95	24.95	Not listed.
3/2/42	Sylvia Kirkpatrick.	11232-33	540-933	L. P. B. Chair 1195.	59.95	6/3/42	Montwell	69.95	10.00	59.95.
						7/14/42	Howard	69.95	10.00	
						7/17/42	Wilkinson	69.95	10.00	
						5/25/42	Hitchman	69.95	10.00	
						6/1/42	Kramer	69.95	10.00	
						7/17/42	Stewart	69.95	10.00	
3/24/42	Elizabeth Kahler, 1901 Wyoming Ave. NW.	13252-16	540-812	Lawson Back Chair 1319 Cocoa.						
3/4/42	Emma Dodd	15941-49	432-22	Occ. Chair 724 Nat. Tapestry.	17.95	7/17/42	Speaker	19.95	2.00	Not listed.

3/18/42	Esther Beuchert	15958-38	432-22	Occ. chair, 730 supr. tapestry.	17.95	8/ 5/42	Mantz	19.95	2.00	Not listed.
3/ 7/42	Geo. Cole	15976-30	432-525	Ottoman and bond chair, 2001 wine.	29.95	6/ 5/42	Karstroms	36.95	7.00	Not listed.
						6/15/42	Robinson	36.95	7.00	
						7/15/42	Sosnik	36.95	7.00	
3/31/42	Emery Keraly, Jr.	13281- 5	704-121½	Maple platform rocker	11.95	7/12/42	Hunter	13.95	2.00	13.95.
				M414 rose crash Cricket		8/24/42	Dunn	13.95	2.00	
						8/ 7/42	Keller	13.95	2.00	
						9/23/42	Sherwood	13.95	2.00	
						10/13/42	Glassman	13.95	2.00	
						10/12/42	Wiederhold	13.95	2.00	
						10/16/42	Clark	13.95	2.00	
						7/17/42	Pistel	13.95	2.00	
						9/12/42	Bender	13.95	2.00	
						8/25/42	Gloring	13.95	2.00	
						8/26/42	Goode	13.95	2.00	
						9/15/42	Patton	13.95	2.00	
3/18/42	Willie Tillman	15960-30	672-281	Adjustable chair, maple.	19.95	7/ 2/42	Larson	24.95	5.00	Not listed.
						7/24/42	Marshall	24.95	5.00	
						7/27/42	Stout	24.95	5.00	
						7/30/42	Wimpahr	24.95	5.00	
						8/14/42	Downs	24.95	5.00	
						9/ 1/42	Belman	24.95	5.00	
						9/17/42	Blumer	24.95	5.00	
						10/ 3/42	Browning	24.95	5.00	
3/27/42	Mary Infantim	13277-31	672-283	Platform rocker, maple.	24.95	9/30/42	Downs	29.95	5.00	Not listed.
3/10/42	L. W. McMorrow.	13426-30	672-280	Wing chair, maple.	16.95	5/28/42	McCanns	19.95	3.00	Not listed.
						6/ 3/42	Rathbone	19.95	3.00	
						6/11/42	MacDonald	19.95	3.00	
						7/30/42	Shield	24.95	8.00	
						9/ 9/42	Naval Research Lab.	24.95	8.00	
						9/ 9/42	Naval Research Lab.	24.95	8.00	

PLAINTIFF'S EXHIBIT 13—Continued

OCTOBER 21, 1942

Date of delivery	Customer	Sales check No.	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
3/19/42	J. A. Elliot	15960–23	672–237	Hi-wing chair	$16.95	5/23/42	O'Doyle	$19.95	$3.00	Not listed.
						5/23/42	Powell	19.95	3.00	
						5/23/42	Townsend	19.95	3.00	
						6/17/42	Minton	19.95	3.00	
						6/ 2/42	McBride	19.95	3.00	
						6/ 3/42	Sorrell	19.95	3.00	
						6/ 6/42	Tate	19.95	3.00	
						6/11/42	Comfun	19.95	3.00	
						6/11/42	Weaver	19.95	3.00	
						6/12/42	Richardson	19.95	3.00	
						6/27/42	Langeleir	19.95	3.00	
						7/ 1/42	Donaldson	19.95	3.00	
						7/ 3/42	Skidmore	19.95	3.00	
						7/ 6/42	Davies	19.95	3.00	
						9/17/42	Saderling	19.95	3.00	
						9/24/42	Carocci	19.95	3.00	
						10/ 8/42	Carocci	19.95	3.00	
						6/ 4/42	Blackwell	19.95	3.00	
						6/ 5/42	Kennedy	19.95	3.00	
						6/ 9/42	Southworth	19.95	3.00	
						6/10/42	Hackert	19.95	3.00	
						6/11/42	Comfun	19.95	3.00	
						6/12/42	Richardson	19.95	3.00	
						6/12/42	Kenley	19.95	3.00	
						6/13/42	Martin	19.95	3.00	
						6/23/42	C. D. S. Eng	19.95	3.00	

						7/ 2/42	Courtney	19. 95	3. 00	
						7/ 6/42	Wilcox	19. 95	3. 00	
						9/24/42	Carrocci	19. 95	3. 00	
						10/ 1/42	Carrocci	19. 95	3. 00	
						9/11/42	Stark	19. 95	3. 00	
						9/25/42	Jerik	19. 95	3. 00	
						10/ 1/42	Stein	19. 95	3. 00	
						10/ 5/42	Elite Laundry	19. 95	3. 00	
						10/13/42	Lyddane	19. 95	3. 00	
						10/14/42	Pinkus	19. 95	3. 00	
						10/16/42	Harris	19. 95	3. 00	
						9/ 2/42	Watson	19. 95	3. 00	
						9/ 4/42	Lampman	19. 95	3. 00	
						9/10/42	Smith	19. 95	3. 00	
						10/ 3/42	McLeary	19. 95	3. 00	
						10/ 6/42	Elite Laundry	19. 95	3. 00	
3/18/42	Thos. F. Healey	15944–31	358–4109	2 pc. l/r suite	119. 95	7/ 8/42	Tadlock	139. 95	20. 00	$139.95.
3/18/42	W. F. Stuart	13252–9	382–3602	Side chair	13. 95	7/22/42	Tuck			
						8/ 7/42	Lawrence			
						8/11/42	Chapman			
						9/ 4/42	Hall			
						9/ 8/42	Emerich			
						9/12/42	Hill			
						9/15/42	Morriale			
3/12/42	Comc. L. F. Smith.	13423–7	195–411	2 pc. l/r suite, 5325 plum.	73. 03	6/15/42	Forman	99. 95	26. 92	139.95.
3/25/42	G. W. Miller	11258–46	95–5742	2 pc. l/r suite, 20195 blue.	89. 95	7/ 2/42	Thomas	109. 95	20. 00	89.95.
3/10/42	Dr. Bruce Taylor, Jr.	13402–27	382–3645	Sofa seat	79. 95	5/22/42	Bailey	89. 95	10. 00	89.95.
						6/ 8/42	Kuhn	89. 95	10. 00	
						6/ 9/42	Ross	89. 95	10. 00	
						6/23/42	Atkinson	89. 95	10. 00	
						7/ 6/42	Sugarman	89. 95	10. 00	
						7/27/42	Cohen	89. 95	10. 00	
						7/29/42	Keys	89. 95	10. 00	

PLAINTIFF'S EXHIBIT 13—Continued

OCTOBER 21, 1942—Continued

Date of delivery	Customer	Sales check No.	Factory and styles	Article	March price	Sales after May 18, 1942				
						Date	Customer	Marked price	Overcharge	Submitted ceiling price list
						8/18/42	Yarborough	$89.95	$10.00	
1331						10/10/42	Dulin	89.95	10.00	
3/ 9/42	B. D. McIntyre	15977–35	873–77	2857 Chair only grey.	$44.95	6/ 6/42	Yewen	49.95	5.00	$49.95.
						6/11/42	Harmon	49.95	5.00	
						6/27/42	Smiley	49.95	5.00	
						5/21/42	Guttman	49.95	5.00	
						6/ 5/42	Fisher	49.95	5.00	
						6/ 5/42	Bugstak	49.95	5.00	
3/21/42	Ben L. Hayman	13380–14	394–E96	Wing chair 8512/2 blue.	70.95	8/26/42	Blake	74.95	4.00	Not listed.
3/ 9/42	Joseph Massina	13446–36	804–2515	Fan back chair	34.95	9/ 3/42	Heilbran	36.65	1.70	Not listed.
				Band, chair	34.95	10/ 2/42	Hatie	39.95	5.00	
				Band chair	34.95	10/ 2/42	Luers	39.95	5.00	
						10/12/42	Luers	39.95	5.00	
						9/23/42	Shiny	39.95	5.00	
						9/24/42		39.95	5.00	
						9/26/42	Crowley	39.95	5.00	
						10/ 3/42	Screws	39.95	5.00	
						10/ 6/42	Townsend	39.95	5.00	
						9/26/42	Johnson	39.95	5.00	
3/28/42	Lambert Duff	11256–9	873–500	2 pc. l/r suite, 1415½.	149.95	10/ 5/42	Townsend	39.95	5.00	
						6/ 2/42	Lee	169.95	20.00	199.95.
						6/10/42	MacFadden	169.95	20.00	
						6/16/42	Cole	169.95	20.00	
						6/12/42	White	169.95	20.00	

3/ 4/42	Robt. J. Grimes	13404–12	731–310	Occ. chair	11. 95	10/13/42	Ewing	14. 95	3. 00	14. 95
				6092 damask		6/ 6/42	Whilchel	14. 95	3. 00	
				6125 rose dam		6/11/42	Whilchel	14. 95	3. 00	
				6094 wine dam		6/12/42	Brandt	14. 95	3. 00	
						6/15/42	Harris	14. 95	3. 00	
						6/16/42	Graberts	14. 95	3. 00	
3/21/42	Wm. D. Mogerman.	13252–12	195–2	P. B. chair 5691	44. 95	5/28/42	Myerson	54. 95	10. 00	54. 95
3/31/42	Raymond J. Braitch.	15952–43	195–4141	Band chair	44. 95	5/20/42	Vozalar	54. 95	10. 00	54. 95
						6/18/42	Williams	54. 95	10. 00	
3/ 4/42	John E. Anderson, Jr.	15971–12	540–890	Button back chair.	39. 95	5/27/42	Gads	49. 95	10. 00	49. 95
	Grand total overcharge								1,366.64	

PLAINTIFF'S EXHIBIT 14

Dept. 59

THE HECHT COMPANY

HAROLD CRONE, BUYER

Items Sold Before Ceiling Established

They Did Not Appear on Any Submitted Price List by Oct. 10, 1942

Class	Factory	Style	Article	Received	Cost	Original sales price	Sales price	Date of sale	Remarks
J	540	815	B. B. Chair, 1474 Rose	8-27-42	$19.00	$27.88	$28.88	9- 9-42	
							28.88	9- 9-42	
							28.88	9- 9-42	
							28.88	9-14-42	
							33.00	10- 1-42	
							39.95	10- 6-42	
							39.95	10-13-42	
		899	Club Chair, 1589 Blue	8-25-42	19.00	27.88	28.88	9- 9-42	
							33.00	10- 3-42	
							33.00	10-14-42	
J		991	Semi P. B. Chair, 1569 Wine.	5-27-42		49.95	38.00	10-29-42	
							49.95	7-13-42	
							49.95	7-16-42	
							49.95	7-18-42	
							54.95	10- 6-42	
	731	324	Occ. Chair, 1318 Blue	7- 3-42		16.95	54.95	10-17-42	
							16.95	7-16-42	
							16.95	9-19-42	
							19.95	10- 7-42	
							19.95	10- 7-42	
							19.95	10-22-42	
							19.95	10-28-42	
							19.95	10-29-42	
		340	Occ. Chair	6- 3-42	11.00	19.95	18.88	6-18-42	On 7-7-42 this item went back to $19.95.

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			6126 Blue				19. 95	6–30–42	
			6127 Gold	6– 3–42		18. 88	24. 95	7– 3–42	
		754	Club Chair	8– 7–42	10. 95	17. 00	17. 00	8–24–42	This item was sold on 9–24–42 for $19.95 and is still being sold at that price.
			949 Red				17. 00	8–25–42	4 sales—9–23–42, 9–24–42, and 10–14–42 $19.95.
			Green				17. 00	9– 1–42	
			950 Blue				22. 95	9–10–42	
			(Green)	8– 7–42	10. 95	17. 00	17. 00		
			(Blue)	8– 7–42	10. 95	17. 00	17. 00	8–25–42	
							22. 95	9–18–42	
							19. 95	9–21–42 & 9–28–42	On 10–3–42 raised to $22.95 and 7 subsequent sales at that figure, last sale 10–24–42.
	330	1200	B. B. Chair	6–13–42	4. 25	9. 95	9. 95		Five (5) sales at $9.95 7–17–42—9–19–42.
	672	237	Hi Wing Chair, Maple; 10452 Blue.	7–28–42		16. 95	16. 95		Eleven sales at $16.95, 8–3–42—9–2–42. 9–17–42 raised to $19.95 at which price it sold on 9–17–42, 9–24–42, 10–8–42.
H		258	S. H. Chair	5–11–42	12. 38	24. 95	24. 95	5–11–42 thru 10–23–42	
	704	152	Wing Cricket Chair, Maple; 634 Yellow Chintz.	9–26–42	5. 45	11. 95	11. 95	10– 9–42 thru 10–24–42	
	704	954	Windsor Chair	8–12–42	1. 90	3. 99	3. 99	8–25–42	To date at same price.
J	804	2722	Lawson Back, Blue Tap	6–17–42	21. 50	39. 95	99. 95	6–22–42	
							39. 95	6–24–42	
							39. 95	6–26–42	
							39. 95	6–29–42	
							39. 95	7– 7–42	
							39. 95	7–16–42	

PLAINTIFF'S EXHIBIT 14—Continued

Class	Factory	Style	Article	Received	Cost	Original sales price	Sales price	Date of sale	Remarks
							$39.95	7-20-42	
							39.95	7-22-42	
							39.95	7-23-42	
							39.95	7-29-42	
							39.95	8- 5-42	
1333									
							36.00	8- 6-42	
							36.00	8-10-42	
							27.88	8-24-42	
							27.88	8-24-42	
							27.88	8-24-42	
							27.88	8-25-42	
							27.88	8-25-42	
							27.88	8-25-42	
							27.88	8-25-42	
							27.88	8-25-42	
							27.88	8-25-42	
							27.88	8-26-42	
							27.88	8-26-42	
							49.95	8-27-42	Ettle.
							49.95	9-15-42	Prescott.
							36.00	9-30-42	
							27.88	10- 1-42	
		2735	B. B. Chair, Gold Broc...	6- 8-42	$20.75	$39.95	49.95	10- 3-42	Page.
							39.95	6-25-42	
							39.95	8- 6-42	
							36.00	8- 7-42	
							36.00	8- 7-42	
							36.00	8-10-42	
							39.95	8-12-42	

						49. 95	9–25–42	Caputo.
						36. 00	9–29–42	
						36. 00	9–29–42	
						39. 95	10–10–42	
						49. 95	10–30–42	Peck.
	2761	Fan Chair, Gray Broc	7– 3–42	26. 50	39. 95	36. 00	8– 6–42	
						36. 00	8–10–42	
						36. 00	9–29–42	
						36. 00	9–30–42	
						36. 00	9–30–42	
						36. 00	9–30–42	
						36. 00	10– 1–42	
						36. 00	10– 6–42	
						59. 95	10–23–42	Badger.
						36. 00	10–23–42	
						59. 95	10–24–42	Ford.
	2765	L. P. B. Chair, Gold Broc	6–12–42	22. 50	39. 95	39. 95	6–22–42 thru 7–28–42	
						54. 95	8– 5–42	Gilman.
						54. 95	8– 4–42	Cawthorn.
						36. 00	8– 6–42	
						36. 00	8– 7–42	
						36. 00	8– 7–42	
						36. 00	8–10–42	
						36. 00	8–10–42	
						36. 00	9–18–42	
						54. 95	9–23–42	Eddington.
						36. 00	10–24–42	
	383	407–17 Desk Chair	9–12–42	6. 80	14. 95	14. 95	9–26–42	
		Harvest blue				14. 95	10– 1–42	
		Green Da ask						
	383	408–17 Desk Chair	9–12–42	5. 95	12. 95	12. 95	10– 6–42	
						12. 95	10–20–42	
						12. 95	10–23–42	
		690–38 Occ. Chair	7–10–42	7. 95	17. 95	17. 95	8–21–42	Five sales between these
						17. 95	10–26–42	dates.

PLAINTIFF'S EXHIBIT 14—Continued

Class	Factory	Style	Article	Received	Cost	Original sales price	Sales price	Date of sale	Remarks
		1139–38	Arm Chair	7–10–42	$19.00	$36.00	$36.00	7–17–42	
			Rose Faille				36.00	7–29–42	
			Blue Faille				39.95	7–29–42	
							36.00		Four sales.
							39.95	10–21–42	
		2519	Bbl Chair	7–10–42		44.95	39.95	10–22–42	
							44.95	8–21–42	
	95	116	Reclining Chair	6–1–42	28.00	49.95	44.95	10–10–42	
			Ottoman, Burg				49.95	7–2–42	Seven (7) sales 8–11–42 thru 9–25–42 at $49.95.
			Velour				49.95	7–10–42	
							49.95	7–15–42	
							49.95	7–29–42	
1334							59.96	8–7–42	Palmer.
K	873	18½	H. B. Chair	6–12–42	18.35	39.95	39.95	8–21–42	
							39.95	9–14–42	
							39.95	10–2–42	
							39.95	10–14–42	
	873	76½	L. P. B. Chair	6–27–42	24.00	46.00	39.95	10–16–42	
							46.00	7–15–42	Four (4) subsequent sales at $46.00.
							46.00	7–24–42	
							46.00	8–7–42	
								8–20–42 thru 9–19–42	
		77½	Bbl. Chair	5–4–42	24.00	46.00	46.00	8–11–42	
							49.95	8–14–42	
H	126	2866–5	Windsor Arm Chair	8–21–42	4.50	8.95	46.00	7–13–42	
							8.95	7–17–42	
								9–8–42	

							$6. 95	9–11–42	
							6. 95	9–14–42	
							9. 95	9–14–42	
							8. 95	9–18–42	
							8. 95	10–29–42	
J	157	2892	Chaise Lounge	7– 8–42	13. 00	24. 95	22. 95	7–15–42	
							22. 95	7–22–42	
							24. 95	7–24–42	
							22. 95	8– 4–42	
							22. 95	8– 4–42	
							22. 95	8–18–42	
							22. 95	9– 4–42	
							29. 95	10– 2–42	Thompson.
							22. 95	10–22–42	
		3640	Club Chair, Blue	7– 3–42	15. 00	28. 88	28. 88	7–10–42 thru 9–14–42	
							29. 95	10– 5 42	Ashley.
	157	3640	Club Chair, Wine	7–21–42	15. 00	29. 95	29. 95	8–13–42	Six (6) sales between 9–1–42 and 9–25–42 at $28. 88.
							29. 95	8–17–42	
							29. 95	8–18–42	
							28. 88	8–28–42	
							28. 88	9– 1–42	
	195	434	Chesterfield Sofa, Blue	5–18–42	59. 50	119. 95	88. 00	6–25–42	Eight (8) sales prior to 9–23–42 at $88.00.
							119. 95	9–23–42	
							119. 95	9–25–42	
	304	461	Bbl. Chair, Wine Tsp	7–10–42	11. 00	17. 88	24. 95	7–22–42	Morrison.
							24. 95	10– 6–42	18 subsequent sales $17.88, 7–22–42—9–23–42.
							24. 95	10– 7–42	
							24. 95	10– 7–42	
		2105	P. B. Chair, Wine	7–10–42	10. 75	17. 88	17. 88	7–29–42	
							24. 95	7–31–42	
							17. 88	8–11–42	
							17. 88	8–11–42	
							17. 88	8–12–42	
							24. 95	8–14–42	Smart.

PLAINTIFF'S EXHIBIT 14—Continued

Class	Factory	Style	Article	Received	Cost	Original sales price	Sales price	Date of sale	Remarks
							$17.88	9- 1-42	From 10-6-42 to 10-8-42 $18.88—7 sales.
							17.88	9- 3-42	
							17.88	9-15-42	
							24.95	10- 3-42	
							24.95	10-29-42	O Hare.
	358	4202	2 Pc. L. R. Suite, Natural Tap.	7-10-42	.....	$79.95	24.95	10-30-42	Jones.
							79.95	8-25-42	
							79.95	8-25 42	
							79.95	8-26-42	
							99.95	9-19-42	
							99.95	9-21-42	
	510	1230	2 Pc. L. R. Suite	6-18-42	$70.00	139.95	99.95	10-10-42	
H	556	402	2 Pc. Dav. Suite	6-12-42	40.65	89.95	139.95	7- 6-42	
							169.95	9-12-42	Grimes.
E	540	1520½	D/P Sofa	5-25-42	60.00	119.95	89.95	6-30-42	This item still sold on 10-7-42 for $89.95.
1335							89.95	7- 2-42	
							119.95	8-25-42	
							129.95	10-28-42	Willoughby.
D	672	247	2 Pc. Suite	6-18-42	52.43	99.95	99.95	8- 6-42	This item sold at the original offered price all during the period 8-6-42 thru 10-23-42.
		28	Wing Chair, Wine, Blue	5-18-42	7.92	16.95	15.00	5-29-42	Thirteen (13) sales 5-29-42 -6-11-42.
							24.95	7-30-42	Shield.
							16.95	8-11-42	Shield.
							24.95	9- 9-42	Naval Research Station.
H		1255	Wing Chair, Wine, 25752	6-18-42	9.58	17.95	17.95	6-23-42	
							17.95	6-20-42	

							17.95	6-22-42	
							24.95	6-23-42	Atkinson.
							24.95	6-29-42	Sutherland.
							24.95	6-29-42	Mason.
							24.95	6-29-42	Koch.
							24.95	7-16-42	Reynolds.
							24.95	9- 3-42	McWilliams.
							19.95	9-22-42	(New shipment).
							19.95	9-23-42	Grab.
							19.95	9-23-42	Dickinson.
J	731	722	Club Chair, 8074, Blue	7-22-42	21.00	39.95	39.95	9-10-42	
							33.00	8-11-42	
							39.95	9-17-42	
							39.95	9-24-42	
							39.95	10-13-42	
			8077 Beige		21.00		39.95	7-31-42	
							33.00	8-11-42	
							39.95	9-15-42	
							39.95	10- 2-42	
							39.95	10-22-42	
							39.95	10-23-42	
							39.95	10-28-42	
	731	728	Wing Chair, Green	7-10-42	21.00	39.95	39.95	7-24-42	This item sold for $39.95 and is still being offered for $39.95.
		6683	8081 Rose, Wine	7-10-42	12.75	24.95	24.95	8-11-42	
		1720	Cog's Chair, 969 Green	6- 3-42	11.00	19.95	24.95	6-15-42	Two more sales in June at $18.88. 7-9-42 sold for $19.95 and subsequently 17 at same last sale 9-4-42.
							24.95	6-15-42	
							24.95	6-16-42	
							24.95	6-17-42	
							18.88	6-23-42	
		1926	Club Chair, Beige	7-22-42	21.00	33.00	33.00	8-11-42	
							33.00	8-11-42	
							33.00	8-11-42	
							33.00	8-12-42	
							39.95	8-17-42	
							39.95	8-18-42	

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PLAINTIFF'S EXHIBIT 14—Continued

Class	Factory	Style	Article	Received	Cost	Original sales price	Sales price	Date of sale	Remarks
							$39. 95	8–18–42	
							39. 95	8–25–42	
							39. 95	8–25–42	
G	383	1136	3 Sec	7–10–42	$50. 00	$99. 95	39. 95	9– 4–42	
09591		1137	Sofa				99. 95	7–17–42	
		1135					99. 95	7–20–42	
		3536–4	Green				99. 95	7–29–42	
							99. 95	8– 3–42	
	383	1136	3 Sec. Sofa		50. 00		99. 95	8–25–42	
		1137					109. 95	10–17–42	Hebb.
		1138							
		3534–4	Rose						
	510	1698	2 Pc. L. R. Suite, 3884 Blue Damask.	6–18–42	82. 50	159. 95	159. 95	7–17–42	
E		1730	2 Pc. L. R. Suite, M3–462 Blue.(1)		115. 00	229. 95	159. 95	7–17–42	
							239. 95	10–7–42	
			S&B 3462 Blue Broc		115. 00		229. 95	7–29–42	
							229–95	8–20–42	
							229–95	9– 3–42	
							229. 95	9–28–42	
	731	1123	Occ. Chair, 5331 Wine	7– 3–42	3. 00	6. 95	5. 95	7–13–42	7 subsequent sales at $5.95.
							6. 95	8–25–42	12 subsequent sales at $6.95, last sale 10–23–42.
J		1150	B. B. Chair, 1532 Wine	2–13–42	8. 25	13. 88	19. 95	2–19–42	This sold at $19.95 and $13.88 during Feb. $19.95 and $14.95 during March.
		1718	Club Chair, 928 Blue, 929 Wine.	6– 3–42	11. 00	19. 95	24. 95	6– 5–42	
							24. 95	6–29–42	
							24. 95	7– 3–42	

						24. 95	7– 3–42	
						19. 95	7– 8–42	Subsequently for $19.95 and $18.88.
		1822	Club Chair, 955 Red, 954 Green.	8– 7–42.	10. 95	17. 00	17. 00	8–25–42
							17. 00	8–25–42
							17. 00	8–25–42
							17. 00	8–26–42
							22. 95	9– 4–42
							22. 95	9–16–42
							22. 95	9–30–42
							22. 95	10– 6–42
							19. 95	10–14–42
							17. 88	10–27–42
							17. 00	10–27–42

[1] Mdse. not received.

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PLAINTIFF'S EXHIBIT 15

THE HECHT COMPANY

New Merchandise Not Sold in March Appearing on Ceiling Price List at a Higher Price Than Early Sales of Items

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling price
672	256	S. H. Chair	Maple	6-18-42	$29.95	$29.95	09590	$34.95
672	270	Plat. Rocker	Maple	6-28-42	16.95	16.95	09589	22.95
704	125	Cricket Chair	Maple—Red Glosheen	5- 6-42	4.88	4.88	50841	5.95
704	125	Cricket Chair	Maple—Green Glosheen	5- 6-42	4.88	4.88	50841	5.95
						5.95		
						5.50		
704	250	Cricket Chair	Maple—Blue Chintz—Blue Glosheen—Red Chintz—Brown Glosheen—Brown Chintz.	7- 7-42	7.95	5.80 7.95	50842	9.95
171	6339	D. P. Sofa	Blue	4-19-42	66.00	89.95	50833	89.95
174	658½	Sofa	Blue	3-26-42	66.00	79.00	50831	99.95
174	744	Wing Chair	Cocoa	3-26-42	39.95	36.00	50831	44.95
						44.95		
174	4209	D. P. Sofa	Wine	4-10-42	99.95	66.00	50831	99.95
174	4209	D. P. Sofa	Black	8- 6-42	66.00	66.00	31384	99.95
174	4211	Fan B. Chair	Beige	4- 3-42	49.95	33.00	50831	49.95
174	4212	L. B. Chair	Blue	4- 3-42	36.00	49.95	50831	49.95
						33.00		
174	4213	Sofa	Blue	3-26-42	79.95	99.95	50831	99.95
						66.00		
540	421	Tux Sofa	Wine Dam	9- 5-41	77.00	89.95	64003	99.95
672	219-	3 Pc. Suite	Wine	4- 9-42	81.03	85.98	50826	89.95
	280		Blue			66.03		
	281							

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672	260	Plat. Rocker	Wine—Maple	4-22-42	17. 95	22. 95	50832	22. 95
672	260	Plat. Rocker	Blue—Maple	4-22-42	19. 95	17. 95 22. 95	50832	22. 95
672	270	Plat. Rocker	Blue		16. 95	19. 95 22. 95	From suite	22. 95
672	270	Plat. Rocker	Green	6-29-42	16. 95	22. 95 19. 95	09589	29. 95
672	1081	Plat. Rocker	Walnut—Red	4-22-42	19. 95	24. 95	50832	24. 95
95	56630	2 Pc. Dav. Suite	Blue Tap	2-27-42	139. 95	139. 95 119. 95	09269	149. 95
556	402	2 Pc. Dav. Suite	Wine Tap	6-12-42	89. 95	71. 53 61. 08 89. 95	50874	99. 95
358	3812	2 Pc. L. R. Suite	Blue Tap	6-24-42	88. 00	88. 00	09637	119. 95
358	3812	2 Pc. L. R. Suite	Red Tap	6-17-42	119. 95	88. 00 100. 00 119. 95	09637	119. 95
358	4102	2 Pc. L. R. Suite	Blue	9- 2-42	79. 95	79. 95 99. 95	31381	119. 95
510	1444	2 Pc. L. R. Suite	Rose—J3491	4-20-42	169. 95	169. 95	50821	189. 95
510	1697	2 Pc. Lr. Suite	Grey—J3706	4-20-42	189. 95	189. 95 159. 95	50821	189. 95
510	1697	2 Pc. L. R. Suite	Rose—J3707	4-13-42	189. 95	189. 95 159. 95	50821	189. 95
510	1737	2 Pc. L. R. Suite	Rose Tap., Blue Tap	7- 2-42	159. 95	159. 95	09639	189. 95
873	295	2 Pc. L. R. Suite	Blue	6- 5-42	139. 95	139. 95 159. 95	50873	199. 95
873	295	2 Pc. Lr. R. Suite	Garrot Vel	6- 5-42	159. 95	159. 95	50873	199. 95
873	295	2 Pc. L. R. Suite	Orleans Rose	5-28-42	139. 95	139. 95 119. 95 159. 95	50873	159. 95
873	880	2 Pc. L. R. Suite	Blue Tap	5-28-42	159. 95	159. 95	50872	169. 95
873	880	2 Pc. L. R. Suite	Coral Tap	5-23-42	159. 95	159. 95	50872	169. 95
383	947-17	Desk Chair	1—Harvest—Wh. Leath.; 2—Wal. Leath.	7-10-42	9. 95	9. 95	09591	11. 95

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PLAINTIFF'S EXHIBIT 16

THE HECHT COMPANY

Items Not Sold in March but Sold at a Higher Price After May 18, 1942, Than on Submitted Ceiling Price List

Factory	Style	Article	Finish	Merchandise received	Original	Subsequent sales	Confirmation	Ceiling price
704	121½	Plat. Rocker	Nat. Crash	5–13–42	$11. 95	$13. 95	50841	$11. 95
704	121½	Plat. Rocker	Rose Crash	5–13–42	13. 95	13. 95	50841	11. 95
804	2515	Boud. Chair	Duration	7–30–42	39. 95	39. 95	50823	34. 95
			Duration Blue					
			Duration Tan					
804	242	Occ. Chair	Duration Grey					
			Wheat Red	7–10–42	22. 95	22. 95	50823	19. 95
			Wheat Blue					
195	434	Chesterfield Sofa	Taupe			22. 95		
672	219–280–281	3 Pc. Suite	Blue	5–18–42	88. 00	119. 95	50861	89. 95
			Wine and Blue	4– 9–42	81. 03	99. 95	50826	89. 95
672	1255	2 Pc. Suite	Maple–Blue	4–13–42	59. 95	64. 95	09265	59. 95
672	219	3 Pc. Suite	Maple	7– 7–42	89. 95	99. 95	09588	89. 95
	1255, 270							
704	121½	Plat. Rocker	Blue	5–13–42	11. 95	13. 95	50841	11. 95

PLAINTIFF'S EXHIBIT 18

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THE HECHT COMPANY

Mark-ups, Sold Goods—These Mark-ups Were Taken After the Sale Was Made, and Were Not on Any Submitted Ceiling Price List as Late as Oct. 10, 1942

Date	Mark-up No.	Class	Mfg. No. and style	Description	Original retail	Present retail	Proposed retail
5-18-42	10-46	H	672/257	High Wing Chair		$16.95	$19.95
5-18-42	10-47	J	731-2618	Club Chair	$11.60	22.00	24.95
		D	672-237	High Wing Chair		16.95	19.95
		D	672-237	Odd Sofa		24.95	29.95
5-19-42	10-48	J	174-680	Wing Chair		39.95	49.95
5-21-42	75- 1	E	195-804	Club Chair		30.00	40.00
5-22-42	75- 4	J	540-770	Fanback Chair		33.00	44.95
5-23-42	75- 5	J	540-984½	Fan Chair	22.50	36.00	38.88
		H	672-1255	Maple Rocker		19.95	24.95
		D	672-238-280	2 Pc. Dav. Suite		86.95	94.95
5-26-42	75- 7	E	174-4214	L. B. Chair		39.95	49.95
5-26-42	75- 8	D	672-237	High Wing Chair		16.95	19.95
5-26-42	75- 9	E	174-4213	Sofa		77.95	99.95
5-28-42	75-12	H	672-380	Wing Chair		16.95	19.95
6- 2-42	75-15	C	429-4100	4 Pc. Bedroom Suite		119.95	159.95
6-18-42	75-18	K	382-3554	Desk Chair	8.00	14.95	15.95
6- 4-42	75-19	H	672-280	Wing Chair	7.92	15.00	19.95
6-10-42	75-23	J	432-502-5	Boud. Chair		48.95	49.95
6-11-42	75-24	G	540-936	LPB Chair		39.95	49.95
6-13-42	75-25	H	672-283	Maple Rocker		19.95	24.95
6-15-42	75-29	J	731-1718	Club Chair		19.95	24.95
		J	731-1700	Cogs. Chair		19.95	24.95
		J	731-1720	Cogs. Chair		19.95	24.95
6-17-42	75-31	J	540-961	Lawson Chair		49.95	59.95
6-19-42	75-33	J	804-2675	L. P. B. Chair		39.95	54.95

PLAINTIFF'S EXHIBIT 18—Continued

Date	Mark-up No.	Class	Mfg. No. and style	Description	Original retail	Present retail	Proposed retail
6-26-42	75-42	H	672-209	Rocker	$15.62	$29.95	$34.95
6-27-42	75-44	S	873-78	Sofa		59.95	79.95
7-2-42	75-47	G	873-18½	2 Pc. L. R. Suite		109.00	119.95
		J	731-340	Boud. Chair		19.95	24.95
7-7-42	83-1	K	195-436	Fanback Chair		36.00	54.95
		J	731-202	Occasional Chair		14.95	19.95
7-8-42	83-2	D	672-237	High Wing Chair		14.95	16.95
		D	672-1255	2 Pc. Suite		57.00	59.95
7-8-42	83-3	H	672-1255	Wing Chair		19.95	24.95
		J	157-3640	Club Chair		28.88	29.95
		J	540-66	Lawson Chair		39.95	44.95
7-16-42	83-5	J	304-465	Wing Chair		17.88	24.95
1341		E	540/421/468	Tuxedo Sofa		79.95	89.95
7-16-42	83-5	k	382-3554	side chair			
7-16-42	83-6	j	157-1941	Club Chair		15.95	16.95
		h	672-1255	Maple Plat Rocker		28.88	29.95
	83-7	z	15-41-156	Makeup Table		19.95	24.95
		d	672-229	odd davenport		16.95	19.95
	83-8	j	304-2105	PB Chair		55.00	59.95
		j	157-2900	Club Chair		17.88	24.95
8-4-42	83-10	d	672-1255	2 pc Davenport		19.95	24.95
		h	672-281	adj chair		59.95	64.95
		E	174-658½	UCLR Suite		19.95	24.95
	83-11	E	540-1915	Tux Sofa		119.90	139.90
		J	157-2892	Chaise Lounge		119.95	129.95
		J	804-2761	Fan Chair		22.95	24.95
		J	394-652	B. B. Chair		39.95	59.95
	83-12	J	304-461	B. B. Chair		79.95	84.95
						17.88	24.95

		H	672-281	Adj. Chair		19.95	24.95
	83-13	J	304-45	Wing Chair		17.88	24.95
		J	432-22	Occ. Chair		17.95	19.95
		H	704-121	Rocker 605		11.95	13.95
	83-15	H	672-280	Mpl. Wing Chair		19.95	24.95
8- 5-42	83-16	D	672-219				
			280-281	3 Pc. Dava. Suite—W. Chair, Adj. Chair		81.03	99.95
8-10-42	83-19	D	672-1255	2 Pc. Dava. Suite		59.95	64.95
		J	157-3640	Club Chair		28.88	29.95
		D	672-219	3 Pc. Dava. Suite—Dava. & Chair, Rocker		69.95	89.95
9- 3-42	83-40	J	540-986	Low Back Chair		27.88	44.95
		J	731-2024	Desk Chair		3.99	5.00
	83-41	E	358-2202	2 Pc. L. R. Suite		79.95	88.00
	83-42	E	358-2202	2 Pc. L. R. Suite		79.95	99.95
		E	358-211	2 Pc. L. R. Suite		79.95	88.00
	83-44	J	157-3640	Club Chair		28.88	29.95
	83-49	S	592-719	End Table Mhg.		11.88	12.95
		J	540-796	P. B. Chair		27.88	39.95
9- 4-42	34-30	J	540-815	Lounge Chair		27.88	28.88
		J	540-898	Lounge Chair		27.88	28.88
		J	540-899	Club Chair		27.88	28.88
9- 5-42	70- 1	E	111-6339	Sofa Mhg.		66.00	89.95
8-10-42	83-20	J	731-2618	Club Chair		20.00	24.95
8-12-42	83-21	H	704-212	Rocker		11.95	13.95
	83-22	J	804-2722	Lawson Back Chair		36.00	39.95
		J	804-2722	Lawson Back Chair		39.95	49.95
8-17-42	83-25	J	731-1720	Chair Cogs		19.95	24.95
	83-26	J	731-728	Bul. Chair		33.00	39.95
		K	873-76½	L. P. B. Chair		46.00	49.95
8-19-42	83-28	J	731-191	Desk Chair		5.95	8.95
		J	731-1123	Occ. Chair		5.95	6.95
	83-30	J	157-720	Boud Chair	7.60	10.00	14.95
8-20-42	83-32	E	157-32	Sofa	36.50	69.95	79.95
9- 2-42	83-34	K	334-671	Occ. Chair		7.00	10.95
9- 3-42	83-35	O	765-14	M. L. Table Maple		12.88	13.95
		E	60-540	Studio 400/55		39.95	44.50
	83-37	J	540-796	L. R. B. Chair		27.88	39.95

PLAINTIFF'S EXHIBIT 18—Continued

Date	Mark-up No.	Class	Mfg. No. and style	Description	Original retail	Present retail	Proposed retail
9- 5-42	70- 2	E	540-1602	L. B. Sofa		$77.00	$79.95
		J	731-1822	Club Chair		17.00	22.95
	70- 3	E	358-2202	2 Pc. L. R. Suite		79.95	88.00
9-10-42	70- 5	J	540-835	Bbl. Chair		39.95	49.95
	70- 6	J	174-680	Wing Chair		39.95	49.95
		J	540-898	Club Chair		27.88	39.95
9-14-42	70-10	J	731-1718	Club Chair		19.95	29.95
		J	304-2105	Club Chair		17.88	24.95
		J	731-754	Adj. Chair		17.00	22.95
		H	672-281	Dava		19.95	24.95
	70-11	F	95-45720	Plat. Rocker		69.95	79.95
		H	672-270			16.95	19.95
1342							
9-16-42	70-13	H	126-2866-5	Arm Chair		6.95	9.95
	70-14	J	157-9640	Wing Chair		28.88	29.95
9-19-42	70-17	J	304-461	Bbl. Chair		17.88	24.95
		H	672-237	Mpl. Arm Chair		16.95	19.95
9-24-42	70-22	J	804-2765	L. P. B. Chair		39.95	54.95
		E	540-1516	Sofa		69.95	99.95
9-26-42	70-24	J	804-2735	Bbl. Chair		36.00	49.95
	70-26	G	873-18½	2 Pc. Lr. Suite		81.53	109.95
		E	95-6320	2 Pc. L. R. Suite		139.95	159.95
4-10-42	89-50	J	540-765	L. P. B. Club Chair		39.95	44.95
		H	672-283	Platform Rocker	$22.50	22.95	24.95
9-16-42	70-13	J	157-1456	Boud Chair & Otto	10.64	34.95	39.95

PLAINTIFF'S EXHIBIT 17

THE HECHT CO.

ITEMS SOLD ABOVE SUBMITTED PRICE LIST

The following information was copied from the company's "Sold Goods Mark-up Books."

Date of mark-up	Page number	Classification	Factory style	Item description	Present price	Proposed price	Ceiling price
5-25-42	75- 6	------	540-933	Loose Pillow Back Chair	$59.95	$69.95	$59.95
5-26-42	75- 7	J	157-3940	Club Chair	22.00	39.95	29.95
6- 3-42	75-17	J	157-3940	Club Chair	29.95	39.95	29.95
6-22-42	75-35	J	540-939	Lawson Back Chair	36.00	59.95	49.95
7- 7-42	83-1	J	432-313	Boudoir Chair	31.95	33.95	30.95
8- 4-42	83-4	E	171-6300	Sofa	104.95	109.95	104.95
8- 4-42	83-10	J	731-202	Desk Chair	5.95	6.99	5.95
8- 4-42	83-12	J	19-220	Club Chair	69.95	79.95	69.95
8-10-42	83-19	K	382-3602	Desk Chair	13.95	15.00	13.95
8-17-42	83-26	D	289 672-1255 270	3 Piece Davenport Suite	69.95	99.95	89.95
8-20-42	83-31	J	157-3940	Club Chair	29.95	39.95	29.95

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PLAINTIFF'S EXHIBIT 3B

CEILING PRICES

Dept. No. 26

Article	Mfr's number	Style	Description	Ceiling price
Student Suits	26–26	6702, 6716, 6719, 5665, 5609	Worsted, 2 trouser 100% wool	$39. 95
Student Suits	26–26	2626, 31, 58, 5615, 67, 49, 6720, 22, 29, 6727	Worsted, 1 trouser suits 100% wool	32. 50
Student Suits	26–19	4900	Worsted, 1 trouser 100% wool	35. 00
Student Suits	26–20	6300, 63, 09, 53, 33, 28, 22, 59, 25	4 pc. 1 matching, 1 contrasting slack, reversible vest 50% wool 50% reprocessed	29. 75
Student Suits	26–24	8700	10 way, all wool	
Student Suits	26–26	711	Covert, 3 pc. 100% wool	29. 75
Student Suits	26–26	6402, 03, 04	Glen plaid, 3 pc. 100% wool	28. 50
Student Suits	26–20		Tweeds, 3 pc. 1 matching 1 contrasting slack	27. 50
Student Suits	26–20	8700, 06, 27, 07, 08, 19, 26, 20	Tweeds, 3 pcs. 1 matching 1 contrasting, slack 100% wool	25. 00
Student Suits	26–12	1432, 13, 06, 08, 01, 1302	3 pcs. coat, vest trousers	25. 00
Student Suits	26–26	5104	Covert 3 pcs	25. 00
Student Suits	26–29		Covert 3 pcs	26. 50
Student Suits	26–29		4 pcs. all wool	26. 50
Student Suits	26–26	5000	3 pcs. all wool, tweeds	29. 75
Student Suits	26–5	6000	3 pcs. coat 1 matching 1 contrasting slack	25. 00
Student Suits	26–26		Gabardine all wool	22. 50
Student Suits	26–26	9100	Gabardine, 2 pcs	28. 50
Student Suits	26–18	5206	Gabardine, 3 pcs	26. 50
Student Suits	26–16	7201, 04, 03	Palm beach tropical worsted	34. 00
Student Suits	26–16	2500	Palm beach	22. 50
Cadet longie suits	26–18		Worsted tropicals, all wool	16. 95
Cadet longie suits	26–28		Wool and reprocessed wool	28. 50
	26–24		Covert 3 pcs. wool & rayon	22. 50
				19. 95

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Cadet longie suits	26–28		Full lined tweeds	18. 95
Cadet longie suits	26–35		Full lined tweeds	17. 95
Cadet longie suits	26–25		Full lined tweeds	16. 95
Cadet longie suits	26–31		Full lined 3 pcs	15. 95
Cadet longie suits	26–5		Full lined 3 pcs	15. 95
Cadet longie suits	26–16		Palm beach, 2 pcs	10. 95
Husky suits	26–19	4300, 4400	½ lined preps, 3 pcs	22. 50
Husky suits	26–28		½ lined preps, 4 pcs	21. 50
Husky suits	26–19		Cadet full lined 3 pcs	18. 95
Husky suits	26–19	4400	Full lined 3 pcs. tweeds	17. 95
Husky suits	26–19	4300	Full lined 3 pcs. tweeds	16. 95
Husky Golf suits	26–19	4400	Full lined 3 pcs	16. 95
Husky Golf suits	26–19	4300	Full lined 3 pcs. tweeds	15. 95
Boy's suits	26–8		Tweeds, cassimeres, 1 knicker	14. 95
Boy's longie suits	26–5	8100, 7100	Tweeds, Jefferson Fabric	13. 95
Boy's longie suits	26–31		Tweeds	12. 95
Boy's longie suits	26–5	4100	Tweeds	10. 95
Boy's longie suits	26–3		Tweeds	9. 95
Boy's Knicker suits	2629		2 knickers, tweeds	15. 95
Boy's knicker suits	26–8		2 knickers	13. 95
Boy's knicker suits	26–8		2 knickers	13. 95
Boy's knicker suits	26–36		2 knickers	13. 95
Boy's knicker suits	26–5	7100, 8100	2 knickers, tweeds	12. 95
Boy's knicker suits	26–31	4100, 5100	2 knickers	11. 95
Boy's knicker suits	26–31	2400	2 knickers	11. 95
Boy's knicker suits	26–3	1500	2 knickers	9. 95
Jr. boy's rugby	26–15		1 short, 1 knicker	13. 95
Jr. boy's rugby	26–30		3 pcs	12. 95
Jr. boy's rugby	26–15	1400	3 pcs. tweed	11. 95
Jr. boy's rugby	26–30	2600	3 pcs. tweed	10. 95
Jr. boy's rugby	26–30		2 pc. coat & longie	10. 95
Jr. boy's rugby	26–16		Palm beach 2 pcs	6. 95
Jr. boy's rugby	26–16		Palm beach, eton	5. 95
Jr. boy's rugby	26–16		Palm beach, ensign	10. 95
Student Coats	26–34	1600	Covert, all wool	30. 00
Student Coats	26–34		Camel; wool face, cotton back	30. 00
Student Coats	26–34	1800	Fleece	27. 50

PLAINTIFF'S EXHIBIT 3B—Continued

Article	Mfr's number	Style	Description	Ceiling price
Student Coats	26–34	4100	Heavy fleece	$30.00
Student Coats	26–34	4600	Camel hair	26.50
Student Coats	26–34	6500	Covert	26.50
Student Coats	26–34	6300, 6400	Tweed, all wool	25.00
Student Coats	26–29	3400	Fleece wool front cotton back	25.00
Student Coats	26–29	41	Zip lined	22.50
Student Coats	26–29	33, 34	Shorty, fleece wool front cotton back	19.95
Boy's school coats	26–29		Heavy	17.95
Boy's school coats	26–29	4100	Zip lined	18.95
Boy's school coats	26–29	3300, 3500	Fleece	17.95
Boy's school coats	26–29	5500, 3400	Fleece	13.95
Boy's school coats	26–31			10.95
Boy's school coats	26–29		Jr., reversible tweeds	10.95
Boy's legging sets	26–29		Jr., reversible tweeds	8.95
Boy's legging sets	26–29		3 pc. fleece	12.95
Boy's legging sets	26–15		3 pc. fleece	12.95
Boy's legging sets	26–30		3 pc. military	13.95
Wool slacks	26–30		3 pc	10.95
Wool slacks	26–25		Gabardine, all wool	8.50
Wool slacks	26–2		Gabardine, all wool	7.95
Wool slacks	26–3		Cavalry twill	7.95
Wool slacks	26–25		Glen plaids, all wool	7.95
Wool slacks	26–25		Covert	6.95
Wool slacks	26–2		Covert, all wool	6.95
Wool slacks	26–1	7000	Gabardine, all wool	6.95
Wool slacks	23–3		Flannel, all wool	6.95
Wool slacks	26–25	100	Tweeds, all wool	5.99
Wool slacks	26–2		Gabardine covert rayon	5.50
Wool slacks	26–2		Tweeds, wool rayon	4.99
Student Suits	26–16		Palm beach	3.95
	26–24		3 pcs., 2 longs & coat tweeds	19.95

Student Suits	26–24	Tweeds, 2 pant	22. 50
Student Suits	26–24	Tweeds, 2 pant	25. 00
Student Suits	26–20	Tweeds, 2 pant	25. 00
Student Suits	26–26	Coverts—3 pcs	26. 50
Student Suits	26–37	Gabardine-wool, 2 pcs	26. 50
Student Suits	26–26	Gabardine-wool, 2 pcs	28. 50
Student Suits	26–20	10 way suit—4 pcs	29. 75
Student Suits	26–26	3 pcs.—wool Tweeds	27. 50
Student Suits	26–26	Worsted—1 pt.—Wool	32. 50
Student Suits	26–19	Worsted—1 pt.—Wool	35. 00
Student Suits	26–26	Worsted—2 pts.—Wool	39. 95
Student Suits	26–16	Palm Beach	16. 95
Student Suits (Summer)	26–16	Sunfast—Rayon & Wool	22. 50
Student Coats	26–22	Polo cloth—Tan—country Twill & Wool Tweeds, Shorty Rev.	19. 82
Student Coats	26– 5	Med. Wght.—Wool & Repro	20. 46
Student Coats	26–29	Ziplined—tweeds	25. 65
Student Coats	26–29	Shorty fleece coat	22. 74
Student Coats	26–29	Fleece Fabrics	28. 50
Student Coats	26–34	Satin lined—Fleece Fabric	31. 35
Student Coats	26–34	Covert Topcoats—tan Polo	30. 21
Student Coats	26–34	Covert Topcoat—Cyrl Johnson tan Polo cloth	34. 20
Student Coats	26–22	Fleece—Zip lined	28. 50
Student Sport Coats	26–19	Blue Flannel	13. 95
Student Sport Coats	26–19	Glen Plaids	14. 95
Student Sport Coats	26–38	Solid Shetlands	14. 95
Student Sport Coats	26–26	Wool fabrics	14. 95
Student Sport Coats	26–20	Wool fabrics	14. 95
Student Sport Coats	26–29	Wool fabrics	14. 95
Student Sport Coats	26–38	Glen Plaid—Wool	16. 95
Student Husky Suits	26–28	Tweeds—3 pcs	21. 50
Student Husky Suits	26–19	Tweeds—3 pcs	22. 50
Student Husky Suits	26–20	Tweeds—Wool—3 pcs	27. 50
Rugby Suit	26–30	3 pc-Knicker, shot-tweeds	8. 95
Rugby Suit	26–30	3 pcs—tweeds & Sport Ensemble	10. 95
Rugby Suit	26–30	3 pcs—Wool tweeds	12. 95
Rugby Suit	26–30	3 pcs—Jefferson fabrics	13. 95

PLAINTIFF'S EXHIBIT 3B—Continued

Article	Mfr's number	Style	Description	Ceiling price
Rugby Suit	26–16		2 pc—Palm Beach	$6. 95
Knicker Suits	26–3		3 pcs—tweed—2 knicke rs	9. 95
Knicker Suits	26–5		3 pcs—tweeds—2 golf	10. 95
Knicker Suits	26–5		3 pcs—tweeds—2 golf	11. 95
Knicker Suits	26–5		3 pcs—Wooltweeds—2 golf	12. 95
Knicker Suits	26–5		3 pcs—Wool tweeds—2 golf	13. 95
Boys' Suits	26–30		3 pcs—Woolfabric—Wo ol tweed	14. 95
Boys' Suits, 1 knicker	26–5		3 pcs—Jeff fabric—2 go f	15. 95
Boys' Suits, 1 longie	26–5		3 pcs—tweeds	10. 95
Youths' long trouser suits	26–16		3 pcs—tweeds	12. 95
Youths' long trouser suits	26–16		3 pcs—tweeds & Jeff fab brics	13. 95
Youths' long trouser suits	26–5		Palm Beach 2 pc	10. 95
Youths' long trouser suits	26–31		Palm Beach (Robust)	11. 95
Youths' long trouser suits	26–35		3 pcs—tweeds	14. 95
Youths' long trouser suits	26–39		3 pcs—tweeds—2 trouse rs	15. 95
Youths' long trouser suits	26–35		3 pcs—tweeds—2 trouse rs	17. 95
Youths' long trouser suits	26–24		3 pcs—Jefferson fabric	18. 95
Youths' long trouser suits	26–39		Tweeds	18. 95
Youths' Husky Suits	26–20		Covert Suit—3 pc C. V. P	16. 95
Youths' Husky Suits	26–19		3 pcs—wool tweeds	19. 95
Youths' Husky Suits	26–19		3 pcs—wool tweeds	22. 50
Youths' Husky Suits	26–19		2 golf—tweeds	15. 95
Jr. Boys' Top Coats	26–28		2 golf—Jeff fabric	16. 95
Youths' Sport Coats	26–30		1 golf, 1 longie—Jeff Fab	18. 95
Wool Slacks	26–19		2 longs—tweeds	21. 50
Wash Slacks	26–25		Rev. Topcoat—tweeds	10. 20
Wash Slacks	26–2		Husky—plaids, solids	10. 95
Wash Slacks	26–2		Tweeds, wool, rayon	3. 99
	26–7		Sanforized cotton gab	2. 99
			Cotton gaber-tex	2. 49
			Cotton and khaki	2. 45

Wash Slacks	26–11	Cotton stripes & solids	1. 99
Wash Slacks	26–17	White ducks	1. 39
Rayon slacks	26–14	Hillcrest slacks	6. 50
Mackinaws	26–10	Plaids, reversibles, hooded	10. 95
Mackinaws	26–10	Hooded wool and reprocessed wool	7. 95
Mackinaws	26–32	Jr. wool and reprocessed wool	6. 30
Raincoats	26–22	Twill, polo cloth, reversibles	16. 95
Raincoats	26–22	All wool tweeds, reversibles	16. 95
Raincoats	26–22	Military trench, cotton gabardine	12. 50
Raincoats	26–22	Cotton gabardine, full length	9. 95
Raincoats	26–21	Finger-tip, cotton gab	7. 50
Raincoats	26–9	Corduroy finger-tip reversible	7. 95
Raincoats	26–4	Cotton gabardine, button in lining	14. 95
Raincoats	26–33	Novelty military coats	3. 99
Raincoats	26–6	Jr. Gabardine Shorty	4. 44
Student Hats	26–27	Fur felt	3. 95
Student Hats	26–27	Fur felt	1. 99
Youths' Sport Coats	26–5	Plaids, solid colors ½ lined	8. 95
Youths' Sport Coats	26–31	Blue flannels	9. 95
Youths' Sport Coats	26–29	Tan Polo	9. 95
Youths' & Students' Slacks	26–25	Gabardine—Rayon, Wool	5. 50
Youths' & Students' Slacks	26–25	Gabardine—Rayon, Wool	4. 99
Youths' & Students' Slacks	26–40	Gabardine—Rayon, Wool	5. 50
Youths' & Students' Slacks	26–2	Gabardine—Rayon, Wool	5. 50
Youths' & Students' Slacks	26–2	Wool tweeds, zipper	5. 99
Youths' & Students' Slacks	26–25	Pleats	5. 99
Youths' & Students' Slacks	26–14	Rayon Gabardine	6. 50
Youths' & Students' Slacks	26–1	Wool Gabardine (lght. wt.)	6. 95
Youths' & Students' Slacks	26–25	Coverts	6. 95
Youths' & Students' Slacks	26–26	Worsted—100% wool	7. 95
Youths' & Students' Slacks	26–25	Wool Gabardine (Med. Wt.)	8. 50
Youths' & Students' Slacks	26–2	Tweeds—wool & Rayon	3. 99
Youths' & Students' Slacks	26–2	Tweeds—wool & Rayon	4. 99
Jr. Boys' Coats & Leggin Sets	26–30	3 pcs. Leggin Sets—tweed	10. 20
Jr. Boys' Coats & Leggin Sets	26–30	Jr. Coats—tweeds	12. 48
Jr. Boys' Coats & Leggin Sets	26–31	3 pcs. leggin sets	12. 48
Jr. Boys' Coats & Leggin Sets	26–30	3 pcs. leggin set—Military	14. 76

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PLAINTIFF'S EXHIBIT 3B—Continued

Article	Mfr's number	Style	Description	Ceiling price
Jr. Boys' Coats & Leggin Sets	26–30		Jr. Coat—tweed Style	$14. 76
Jr. Boys' Coats & Leggin Sets	26–29		Polocoat cloth	15. 90
Jr. Boys' Coats & Leggin Sets	26–30		Leggin sets—3 pc. fleece	15. 90
Jr. Boys' Coats & Leggin Sets	26–30		3 pcs leggin sets—fleece	17. 04
Jr. Boys' Coats & Leggin Sets	26–30		3 pc leggin sets—fleece interlined	18. 18
Jr. Boys' Coats & Leggin Sets	26–29		Jr. Coat—Fleeces and Polocloth	15. 90
Youths' Coats	26–5		Med. Weight—tweeds	12. 48
Youths' Coats	26–29		Fleece tweeds	14. 76
Youths' Coats	26–29		Fleece—full lined	20. 46
Youths' Coats	26–29		Zip lined—tweeds	21. 60
Washable Slacks	26–2		Fancy patterns, sanforized	1. 99
Washable Slacks	26–41		Stripes, Reversible fabric and Khakis	2. 45
Washable Slacks	26–2		Gabardines, Solid colors	2. 99
Washable Slacks	26–41		Gabardines, Solid colors	2. 99
Washable Slacks	26–16		Palm Beach	3. 95
Slack Sets	26–42		Hopsacking fabrics—cotton	2. 69
Slack Sets	26–42		Cotton, Gabardine, poplin	2. 99
Slack Sets	26–45		Hopsacking, stub yarns, fabrics	2. 99
Slack Sets	26–42		Poplins, gabs	3. 99
Slack Sets	26–45		Wash suits, poplins, gabs	3. 99
Slack Sets	26–45		Twill—Cotton	4. 50
Slack Sets	26–45		Gabardine—rayon	4. 99
Slack Sets	26–42		Gabardine—rayon	4. 99
Slack Sets	26–43		Rayon	5. 95
Slack Sets	26–43		Rayon, long sleeves	9. 95
Separate Vests	26–44		Corduroy	5. 00
Young Men's Coats	26–34	4100	Heavyweight fleece	31. 35
	26–22	6575	Shorty—reversible twill	16. 95
	26–26		Wool—plaids and solids	14. 95
	26–26		Wool sport coat	16. 95
	26–31		Wool sport coat	8. 95

Sport Coats	26–31		Blue flannel	9. 95
Student Suits	26–26	9100	All wool gabardine—2 pcs	26. 50
	26–16		Palm Beach	16. 95
Rugby Suit	26–16		2 pcs. Palm Beach	6. 95
Cadet Suit	26–16		Palm Beach—2 pcs	10. 95
Eton Suit	26–16		Palm Beach—2 pcs	5. 95
Tropical Suit	26–16		2 pcs.—86% rayon—14% wool	22. 50
Slack Sets	26–42		Cotton—2 pcs	2. 69
	26–42		Cotton and rayon	4. 99
	26–42		Cotton-twill-rayon, 2 pcs	3. 99
	26–42		Cotton—2 pcs	2. 99
Gabardine Slacks	26–25		Pleated—zippers	8. 50
	26–25		Rayon & wool mixture	5. 50
	26–25		Wool, rayon & cotton	3. 99
	26–1		Light weight wool	6. 95
Wool Slacks	26–16		Palm Beach	3. 95
	26–25		Covert	6. 95
	26–11		Gabardine	7. 95
	26–2		Gabardine cotton	2. 99
Wash Slacks	26–7		Cotton—Riverside fabric	2. 45
Wash Slacks	26–2		Sanforized wash slacks	1. 99
Rayon Slacks	26–14		Acetate arteeka fabric	6. 50
Boys' Raincoat	26–45	34/381	Black rubberized—Coat & hat to match	3. 99
Student Raincoat	26–filed		Tackle twill fabric Cravenette yoke lining	16. 95
Boys' Jacket	26–23		Reversible corduroy and Gabardine BR jackets	7. 95
Gabardine Raincoat	26–22	4840	Cotton gabardine tackle twill 32 to 38	16. 95

PLAINTIFF'S EXHIBIT 30

Dept. No. 60.

CEILING PRICES

Article	Mfr's number	Style	Description	Ceiling price
Beds	6–28	AH70–71–72	Headboard & legs	$15.95
Beds	60–19	M	Headboard	10.95
Beds	60–4	333		17.50
Beds	60–4	114		17.50
Beds	60–4	332		15.95
Beds	60–26	4JL		11.95
Beds	60–26	72		8.95
Beds	60–26	112		9.95
Beds	60–26	348		19.95
Beds	60–26	395		14.95
Beds	60–27	104/12		14.95
Beds	60–27	202½		17.95
Beds	60–27	204/12		17.95
Beds	60–20	1212		39.95
Beds	60–20	1125		34.95
Beds	60–20	1120		29.95
Beds	60–20	1115		29.95
Beds	60–20	793		22.50
Beds	60–20	775		17.95
Beds	60–20	740		27.50
Beds	60–20	732		29.95
Beds	60–20	709		2.95
Beds	60–31	1050		49.95
Beds	60–9	151		19.95
Beds	60–9	117		34.95
Beds	60–21	234		22.50
	60–21	25		16.95

Beds	60–21	62		11. 95
Beds	60–21	72		15. 95
Beds	60–21	88		14. 95
Beds	60–25	616	Headboard outfit	89. 95
Beds	60–25	612	Swing	150. 00
Beds	60–25	115 or 111	Headboard outfit	67. 50
Beds	60–23	102	Bunk	59. 99
Beds	60–23	101	Bunk	29. 99
Beds	60–29	7704		9. 00
Beds	60–13	213	Headboard outfit	52. 50
Beds	60–13	211	Headboard outfit	39. 95
Beds	60–10	858		8. 95
Cots	60–2	193	Cot & matt	22. 50
Duo Bed	60–2	320		59. 95
Cot	60–12	16		5. 95
Cot	60–12	110		6. 95
Cot	60–12	290/108		26. 50
Cot	60–12	777/108		27. 50
Cot	60–12	6210		39. 99
Cot	60–12	6211	Duo	59. 95
Cot	60–1			34. 95
Cot	60–28	831	Duo	59. 95
Cot	60–3	608 or 444	Duo	59. 95
Cot	60–28	911		79. 50
Mattresses	60–2	20	Innerspring	29. 95
Mattresses	60–2		Innerspring	39. 50
Mattresses	60–8		Felt	12. 95
Mattresses	60–12		Innerspring	24. 95
Mattresses	60–12		Innerspring	14. 99
Mattresses	60–12		Innerspring	39. 50
Mattresses	60–19		Innerspring	44. 50
Mattresses	60–1		Cotton	6. 50
Mattresses	60–28		Innerspring	29. 95
Mattresses	60–28		Innerspring	44. 50
Mattresses	60–28		Innerspring	39. 50
Mattresses	60–28	100	Innerspring	29. 95
Mattresses	60–28	724	Innerspring	29. 95

PLAINTIFF'S EXHIBIT 30—Continued

Article	Mfr's number	Style	Description	Ceiling price
Mattresses				
Mattresses	60–17	60	Innerspring	$29.50
Mattresses	60–17		Innerspring	16.95
Mattresses	60–17		Innerspring	39.50
Mattresses	60–17		Innerspring	39.50
Mattresses	60–16	13	Cot	19.99
Mattresses	60–32		Innerspring	5.90
Mattresses	60–32		Innerspring	22.50
Mattresses	60–32		Bot. spring on legs	14.95
Mattresses	60–32		Innerspring	36.95
Mattresses	60–32		Innerspring	22.50
Mattresses	60–32		Cotton	11.95
Mattresses	60–32		Felt	9.95
Mattresses	60–32		Felt	12.95
Mattresses	60–32		Felt	19.95
Mattresses	60–32		Felt	16.95
Mattresses	60–32		Cotton	24.95
Mattresses	60–13	1515	Innerspring	9.95
Mattresses	60–7	121	Innerspring	16.95
Mattresses	60–7		Innerspring	14.95
Mattresses	60–7		Felt	14.95
Mattresses	60–7	95	Innerspring	12.95
Mattresses	60–7		Innerspring	34.95
Mattresses	60–7		Innerspring	14.95
Mattresses	60–7		Innerspring	11.95
Mattresses	60–7		Bot. spring & matt	24.95
Mattresses	60–7		Innerspring	39.95
Mattresses	60–7	405	Bot. spring & matt	16.95
Mattresses	60–7	30	Headboard outfit	42.50
Mattresses	60–7	22	Innerspring	39.95
			Innerspring	13.95
				15.99

Mattresses	60–14	30	Latex	39. 95
Mattresses	60–14	45	Latex	59. 95
Springs	60–28		Bot	59. 50
Springs	60–28		Bot	29. 95
Springs	60–28		Coil	19. 95
Springs	60–28	978	Bot	29. 95
Springs	60–28	A51	Bot. on legs & matt	44. 95
Springs	60–8	4	Flat	6. 95
Springs	60–8	2691	Coil	16. 95
Springs	60–8	2590	Coil	9. 95
Springs	60–12		Box	24. 95
Springs	60–19		Headboard outfit	59. 95
Springs	60–19		Box	39. 50
Springs	60–1	287	Coil	12. 95
Springs	60–1	280	Coil	9. 95
Springs	60–2	20	Bot	29. 95
Springs	60– 2		Coil	19. 75
Springs	60–28	2441	Coil	12. 95
Springs	60–28	2454	Coil	15. 95
Springs	60–28	2461	Coil	16. 95
Springs	60–28	2480	Coil	8. 95
Springs	60–28	2481	Coil	9. 95
Springs	60–28	75	Coil	9. 95
Springs	60–10		Box	29. 95
Springs	60–13	50	Box on legs	16. 95
Springs	60–17		Box	19. 99
Springs	60– 5		Coil	19. 95
Springs	60– 2		Coil	19. 75
Springs	60– 6	157	Coil	16. 95
Springs	60– 6		Coil	19. 75
Springs	60–32		Box	22. 50
Springs	60–52		Box	16. 95
Springs	60–32		Box	19. 95
Springs	60–13	1515	Box on legs	14. 95
Springs	60–18	319–1032, 1031	Coil	9. 50
Springs	60– 7		Box	16. 95
Springs	60– 7		Box	14. 95

PLAINTIFF'S EXHIBIT 30—Continued

Article	Mfr's number	Style	Description	Ceiling prices
Springs	60- 7	75	Box	$11.00
Springs	60- 7		Box	24.95
Studio	60- 2	427, 428	Coach, varied covers	49.95
Studio	60-12	65-703	Sofa	125.00
Studio	60-12	2504	Sofa	79.50
Studio	60- 5	61288	Sofa	54.95
Studio	60- 5	47314	Sofa	62.50
Studio	60- 5	47304	Sofa	49.95
Studio	60- 5	47214	Sofa	59.95
Studio	60-22	45860	Sofa	69.75
Studio	60-22	2194	Sofa	69.75
Studio	60-22	2142	Sofa	69.75
Studio	60-22	2150	Sofa	59.95
Studio	60-22	2929	Divans, varied covers	66.50
Studio	60-25	3823; 3825	Maple arms	49.95
Studio	60-24	4262	Walnut arms	39.95
Studio	60-24	4264	Sofa, maple arms	39.95
Studio	60-24	9843	Arms	59.95
Studio	60-24	3261, 3262	Arms	39.95
Studio	60-24	3038	Hide-a-bed sofa	49.95
Studio	60-28			137.50
Studio	60-28			69.75
Studio	60-28			89.50
Studio	60-28			79.50
Studio	60-28	VS230	Sofa	65.00
Studio	60-28	VS231	Sofa	65.00
Studio	60-28	VS232	Sofa	49.95
Studio	60-28	VS233	Sofa	59.95
Studio	60-28	S13		59.95
Studio	60-28	S910		85.00
	60-28	S916		69.71

Studio	60-30			69.75
Studio	60-30			64.50
Studio	60-30			59.95
Studio	60-30			59.95
Studio	60-30			54.95
Studio	60-30		Sleep chair	54.95
Studio	60-30	K96½		32.50
Studio	60-17	307	Various covers	39.95
Studio	60-11	2011	Maple sofa	34.95
Studio	60- 3		Sleep chair	59.95
Studio	60- 6		Love seat	34.95
Studio	60-13	14360	Sofa	69.75
Studio	60-13	21412	Sofa	47.50
Studio	60-13	22029	Sofa	47.50
Studio	60-13	22108	Sofa	49.95
Studio	60-13	22365	Sofa	54.95
Studio	60-13	22406	Sofa	59.95
Studio	60- 7	2000		59.95
Studio	60- 5	61288	Sofa	49.95
Victory Coil spring	60-12		Coil	79.50
Coil spring	60-12	1057	Platform top coil	19.95
Coil spring	60-12		Double deck	12.95
Sofa bed	60-33	411	Modern-drop back	15.95
Sleepliner mattress	60-12		Deluxe	59.95
Coil spring	60-34	25	Silver	21.60
Coil spring	60-34	55	Silver	9.95
Coil spring	60-34	250	Silver	16.95
Coil spring	60-8		Blue	15.95
Coil spring	60-8	2690	Blue	9.95
Coil spring	60-8	2691P	Blue	12.95
Coil spring	60-12	Superest	Grey	16.95
Studio	60-10	Duncan 78½	Duncan 78½	19.75
Chair bed	60-12	3770	Walnut	64.50
Studio	60-10	96½	Studio couch 5	29.95
Sofa bed	60-35	14	Blue-wine	39.95
Sofa bed	60-11	11	Mohair	39.95
				59.95

PLAINTIFF'S EXHIBIT 25.

Dept. No. 55.

CEILING PRICES.

Article	Mfr's number	Style	Description	Ceiling price
Women's Arch shoes	55–19		Black kid & gabardine arch shoes	$5.00
Women's Novelty shoes	55–14		Patent dress shoes	5.00
Women's Novelty shoes	55–8		Patent, tan calf, black & blue calf	5.00
Women's novelty shoes	55–8		Gabardine, red, white spectators, black, blue & brown trim.	5.00
Women's novelty shoes	55–1		Red, green, blue & tan & white, white & browns	5.00
Women's novelty shoes	55–10		All white, white & browns	5.00
Women's novelty shoes	55–15		All white, dress shoes	4.00
Women's novelty shoes	55–15		All white dress shoes	5.00
Women's novelty shoes	55–5		Ombre, sandals, beige & red	5.00
Women's novelty shoes	55–20		Patent sandals	5.00
Women's novelty shoes	55–6		Black & brown alligator calf	5.00
Women's sports shoes	55–5		Patent & blue calf sandals	4.00
Women's sport shoes	55–3		Brown & white moccasins	5.00
Women's sport shoes	55–3		Saddle oxfords, tan, white nurses, white & brown calf.	4.00
Women's sport shoes	55–21		Tan, white, red, white & tan	5.00
Women's sport shoes	55–22		Gillies, monks & oxfords black & tan calf	5.00
Women's novelty shoes	55–23		Red cross, white, black, white & brown, tan	6.95
Women's arch shoe	55–23		Red cross, patents black calf, tan, blue, whites	6.95
Dr. M. W. Locke shoes	55–7		Red cross, black kid, brown, white & blue	6.95
Dr. M. W. Locke	55–7		White step in	12.50
Dr. M. W. Locke	55–7		Black kid, 38 blue 4X—3X & browns, white	11.50
Dr. M. W. Locke	55–7		Black calf, tan calf	10.00
Margy novelties	55–16		White, browns, white & black	10.50
Vuylite margy	55–18		Black, blue, tan, white etc	6.95
			Vuylite shoes, dress—all colors, patent, & red	6.95

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Novelities shoes	55–10	Vuylite, all colors	7. 95
Reptile shoes	55–18	Frogskin genuine	8. 95
Sport shoes	55 –4	Espaduille white, red & green	6. 95
Novelty	55 –2	Patent opera	6. 95
Novelty	55–13	Black, gabardine, black calf, brown calf	6. 95
Novelty	55 –2	Brown & white spectator	7. 95
Tramp along	55–12	Walking shoes, white, white & browns	6. 95
Casual classics	55–11	Sport shoes in black & brown	8. 95
Laud Schober Novelty	55 –9	Dress shoes, gabardine	8. 95
Laud Schober Novelty	55 –9	Dress shoes, blue calf, tan calf, patent, black calf	9. 95
Laud Schober Novelty	55 –9	Suedes, black & browns	6. 95
Laud Schober	55 –9	Tan calf, nailhead	9. 95
Laud Schober	55 –9	Swedes, black & brown	4. 95
Urbanite Novelties	55–17	Alligators	14. 75
Urbanite Novelties	55–17	Dress shoes, tan, black & blue patent	12. 95
Urbanite Novelties	55–17	Suedes, black, blue, red	12. 95
Urbanite Novelties	55–17	Suedes, black & browns	9. 85
Evening shoes	55–5	Silver kid sandal	5. 00
Evening shoes	55–5	Gold Mesh sandals	4. 00
Evening shoes	55–5	Silver mesh sandals	4. 00
Evening shoes	55–5	Gold mesh sandals	4. 00
Evening shoes	55–5	Silver mesh sandal	4. 00
Evening shoes	55–5	Silver mesh sandal	4. 00
Evening shoes	55–5	Gold Mesh sandal	4. 00
Tramp Along	55–12	Blk. suede-reptile trim	9. 95
Tramp Along	55–12	Genuine Alligator	10. 95
Tramp Along	55–12	White oxford—open back	6. 95
Women's Dress Shoe	55–18	Vinylite, blk suede trim	6. 95
Women's Dress Shoe	55–18	Vinylite, multi-color	6. 95
Women's Dress Shoe	55–18	Vinylite, Brown suede trim	6. 95
Women's Dress Shoe	55–18	Vinylite, Black suede trim	6. 95
Sandal, avalon	55–5	Brown crushed kid	5. 00
Sandal, avalon	55–5	Kona red suede	5. 00
Sandal, avalon	55–5	Blk suede	5. 00
Sandal, symphony	55–5	Blk suede	4. 00
Sandal, Shag	55–5	Kona red suede	4. 00

PLAINTIFF'S EXHIBIT 25—Continued

Article	Mfr's number	Style	Description	Ceiling price
Play & Str. shoes	55-24		Leather soles, nail heads, sandal	$4.95
Play & Str. shoes	55-25		Sandal, rubber sole	1.98
Play & Str. shoes	55-26		Open back, leather sole	2.95
Play & Str. shoes	55-27		Open back, leather sole	3.95
Play & Str. shoes	55-27		Leather sole—toe	3.95
Play & Str. shoes	55-28		Leather sole & upper sandal	2.50
Play & Str. shoes	55-29		Huraches	1.98
Play & Str. shoes	55-27		Side gore, leather sole	2.95
Footmates	55-30		Leather sole, all colors	2.95
Play & Str. shoes	55-23		Play shoes	4.95
Rope Sole play shoe	55-31		Leather sole sandal	3.95
Play shoes	55-35		Rope sole espadrille	2.25
Beach shoes	55-32		Rubber sole, cotton uppers	1.98
Footmates	55-33		Wooden soles, laxtex upper	2.25
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Footmates	55-34		Play shoes, corduroy & velvet	4.95
Was. Sport Shoes	55-37	5408	Hurache, hand lacing in vamp	5.00

PLAINTIFF'S EXHIBIT 38

CEILING PRICES

Dept. No. 47.

Article	Mfr's number	Style	Description	Ceiling price
Silk Hose	47-8		3 thread rayon top	$1. 15
	47-7		3/42 all silk crepe	1. 50
	47-7		3/45 all silk crepe	1. 50
	47-12		Kantrun hose—l. top	1. 65
Silk Hose	47-12		3 thread crepe—rayon top	1. 35
	47-12		4 thread crepe—rayon top	1. 35
	47-12		4 thread—all silk	1. 65
	47-9		4 thread—rayon top	1. 35
	47-9		3 thread all silk—extra length	1. 95
	47-9		fine lisle hose	1. 15
Silk Hose	47-14		7 thread 42—lisle top	1. 15
Silk & Rayon Hose	47-6	20/51	all nylon	2. 25
Rayon	47-6	751	silk and rayon mixture	.89
	47-6	101	rayon—lisle top	.89
Silk Hose	47-6	465	bemberg—48 gauge	1. 15
	47-6	326	3 thread—rayon top	1. 00
	47-6	426	4 thread—lisle top	1. 15
	47-6	245	2 thread—all silk	1. 35
	47-6	345	3 thread—all silk	1. 35
Lisle	47-6		fine lisle	1. 50
Rayon Hose	47-11		75 denier	.79
	47-11		100 denier	.79
	47-3		75 rayon crepe	1. 00
Silk	47-3		3/42 rayon top	1. 15
	47-11		3/51 all silk	1. 65
Silk	47-11		3/45 all silk—lace top	1. 65
	47 2		outsize silk—l. top	1. 95

PLAINTIFF'S EXHIBIT 38—Continued

Article	Mfr's number	Style	Description	Ceiling price
Nylon Hose	47-11		20/51 all nylon	$2.25
	47-15		fine mesh nylon	1.95
Silk Hose	47-1		non-run—all silk	1.95
	47-27		service weight—defense colors	1.65
	47-24		3 thread silk—rayon top	1.15
Lisle Hose	47-24		needles-eye mesh	1.50
	47-24		bridal veil mesh	1.35
	47-24		non-run lisle	1.95
Rayon Hose	47-24		outsize rayon—lisle top	1.15
Silk Hose	47-23		3 thread—all silk	1.50
	47-23		4 thread—all silk	1.65
	47-13		2 thread—all silk	1.35
	47-13		3 thread—lace top	1.35
Silk Hose	47-13		6 thread—lisle top	1.15
Nylon Hose	47-19		nylon individual fit	1.75
Silk Hose	47-18	444	6/45 service—lisle top	1.25
	47-18	605	6/45 service—lisle top	1.65
Rayon	47-18	101	rayon—long—lisle top	New
Silk	47-18	450	silk—extra long	1.65
	47-17	151	outsize silk	1.65
Lisle	47-17	100	fine mesh	1.25
Rayon	47-17	5061	rayon—extra long	1.15
Nylon Hose	47-25	U300	30 denier—rayon top	1.65
Nylon	47-25	U400	30 denier—lisle top	1.65
	47-25	U600	30 denier—51 gauge—l. top	1.95
Nylon Hose	47-25		30 denier—all nylon	1.95
	47-25		20 denier—all nylon	2.25
Lisle	47-25		plain—fine	1.50
Rayon	47-25	U35	all rayon—45 gauge	1.15
	47-25	U36	rayon—extra long	1.35
Rayon	47-25	U9	mesh	1.35

	47-25	465	65 denier—51 gauge	1. 35
Rayon Hose	47-25	U40	service rayon	1. 15
Silk	47-25	245	extra long	1. 35
	47-25		3 thread—all silk	1. 25
	47-25		2 thread—all silk	1. 25
	47-25	U3	3 thread—rayon top	1. 25
	47-25	U4	4 thread—lisle top	1. 35
Silk	47-25		fancy lace silk	1. 65
	47-25		4 thread—all silk	1. 25
	47-25		3 thread—all silk	1. 15
	47-25	RF132	run-proof silk	1. 50
	47-25	41	service silk	1. 35
Silk	47-25	U2	2 thread—rayon top	1.25
	47-20	739	3 thread—all silk	1. 35
	47-20	366	2 thread—all silk	1. 35
	47-20	709	2 thread—51 gauge	1. 50
	47-20	747	4 thread—all silk	1. 35
Silk	47-20	370	3 thread—rayon top	1. 15
	47-20	379	6 thread service weight	1. 35
Lisle	47-20	354	lisle	1. 35
	47-20	356	plain	1. 15
	47-20	775	heavy	1. 00
Lisle	47-20	359	fine—plain	1. 35
Rayon Hose	47-20	311	all rayon—1. top	.79
	47-20	318	chiffon rayon	1. 00
	47-20	319	service	1. 00
	47-20	316	stretch top	1. 15
Nylon	47-20	345	service—1. top	1. 95
	47-20	323	all nylon	1. 95
	47-20		45 gauge—lisle top and ft.	1. 65
	47-20	726	all nylon mesh	2. 25
Silk	47-16	340	3 thread—all silk	1. 65
Silk	47-16	231	3 thread—all silk	1. 65
	47-16	337	3 thread—lisle top	1. 25
	47-16	131	3 thread—rayon top	1. 30
	47-16	138	3 thread—rayon top	1. 65
	47-16	344	4 thread—stretch top	1. 50
Silk	47-16	340	3 thread—all silk	1. 65

PLAINTIFF'S EXHIBIT 38—Continued

Article	Mfr's number	Style	Description	Ceiling price
Rayon	47-16	212	100 denier	$1.00
	47-16	270	75 denier	1.00
	47-16	210	150 denier	1.00
Rayon	47-16	171	stretch top	1.15
	47-16	150	service	1.35
Wool	47-16	151	rayon—liball top	1.15
	47-5		under hose	1.00
	47-5	244	wool mixtures	1.15
Wool	47-5	424	all wool	1.95
Lisle	47-25		silk and wool	1.95
	47-4		lisle	1.35
Lisle Socks	47-4		lisle	1.50
	47-10		lastex top	.39
	47-22		lastex top	.39
	47-22	K60	6/8 ribbed	.39
	47-22	304H	plain-cuffs	.39
Wool Socks	47-22	231	knee length	.59
Lisle	47-22	A4C	rayon wool	.59
	47-22		argyle-fancy	.39
Lisle Stockings	47-22	405	plain-ribbed top	.29
	47-22	999	ribbed lisle	1.15
Lisle Socks	47-22	798	fancy	1.00
	47-20	4342	fancy	.50
	47-20	827	fancy	.39
	47-20	4346	sport	.39
	47-20		sport	.39
	47-28		fancy	.50
	47-20		tennis socks	.39
	47-22		cabanna lisle	.50
	47-26		agyle	1.00
	47-26		flower emb	.50
	47-26		fancy	.39

[fol. 593] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8498

PRENTISS M. BROWN, Price Administrator of the Office of Price Administration, Appellant,

vs.

THE HECHT COMPANY, Appellee

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—June 15, 1943

Argument commenced by Mr. Fleming James, Jr., attorney for appellant; continued by Mr. Charles A. Horsky, attorney for appellee, and concluded by Mr. Fleming James, Jr.

[fol. 594] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

No. 8498

PRENTISS M. BROWN, Administrator of the Office of Price Administration, Appellant,

v.

THE HECHT COMPANY, Appellee

Appeal from the District Court of the United States for the District of Columbia

Argued June 15, 1943—Decided July 22, 1943

Mr. Fleming James, Jr., Chief, Litigation Branch, with whom *Messrs. George J. Burke*, General Counsel, *Thomas I. Emerson*, Associate General Counsel, *David London*, Head Appellate Section, *George M. Austin*, Head Special Litigation Section, and *A. M. Dreyer*, all of the Office of Price Administration, were on the brief, for appellant.

Mr. Charles A. Horsky, with whom *Mr. Spencer Gordon* and *Miss Amy Ruth Mahin* were on the brief, for appellee.

Before Groner, C. J., Edgerton, J., and Eicher, Chief Justice of the District Court of the United States for the District of Columbia

OPINION

EDGERTON, J.:

This is a suit for an injunction, brought by the Price Administrator against the Hecht Company under Section 205 (a) of the Emergency Price Control Act of 1942.[1] After issuing a temporary restraining order and holding a full hearing, the District Court dissolved the restraining order and dismissed the complaint.[2]

Section 205 (a) provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he *may* make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order *shall* be granted without bond." [Italics supplied.] The pertinent language of section 4 is: "(a) It shall be unlawful * * * for any person to sell or deliver any commodity * * * or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing."

[fol. 595] The complaint charges the Company with several sorts of violations of the General Maximum Price Regulation which was issued under the authority of the Act on April 28, 1942.[3] These include failures to determine maximum prices in accordance with the Regulation: failures to keep, post or furnish required records, notices, statements, and reports; and selling goods, and offering goods for sale, at more than ceiling prices. The complaint asks an injunction to restrain the defendant, its officers, agents,

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[1] Act of Jan. 30, 1942, 56 Stat. 23, 33, 50 U. S. C. A. Appendix § 925 (a).

[2] *Brown, Administrator,* v. *Hecht Company,* 49 F. Supp. 528.

[3] 7 Fed. Reg. 3153.

etc. from similar acts. The Company's answer denies all violations. Without admitting any failure or neglect to comply with any regulation, it alleges that if there has been such failure or neglect it has been involuntary, corrected as soon as discovered, inconsequential, and unsubstantial. It alleges that the Company has made and is making, at great expense, every possible effort to comply; that it would be impossible for it to comply more fully; and that an injunction would injure the Company's reputation and benefit no one.

In its findings of fact or in an accompanying opinion the District Court said among other things: "The defendant and its employees have attempted, in good faith, to comply with the act, and have taken vigorous steps to do so. The compliance thus resulting has been very substantial. * * * Violations occurred but I do not consider them numerous in view of the difficulties involved in defendant's efforts to comply with the act and regulation. * * * The defendant took timely, positive and vigorous measures to understand the requirements and to meet them. It set up a capable organization with an unlimited expense account, charged with the duty of directing and supervising the personnel in an honest and sincere effort to comply in full measure with the requirements of the act and regulation. * * * I do not find that the defendant company is chargeable with bad faith or * * * disloyal motive or purpose. It is not charged that the defendant was wilful in its violations and I think it appropriate to say that the element of wilfulness is entirely lacking in the evidence. * * * Some of the violations may have resulted from negligence or carelessness but I find them innocent in character. No inference of intentional wrong doing may be drawn from them. It may be said to the credit of the defendant company that all errors and mistakes were promptly corrected as soon as they were discovered. It should also be added that the defendant has consistently improved its methods and its records to more fully meet the requirements of the act and regulation and to combat the difficulties which arise from the elements of human frailty. * * * These mistakes in pricing and listing were all made in good faith and without intent to violate the regulations. The performance of the store as to posting was excellent. * * * There is manifestation of good faith by the defendant, and I find no likelihood of further viola-

tion by it." But the court's conclusions of law show, and the Company concedes, that this last statement means only that "there will be no further violations except such as may be caused by human frailties." The Company concedes that there will be further violations, and contends that it cannot avoid them.[4]

[fol. 596] The court also found that "an injunction would have no effect by way of insuring better compliance in the future and would be unjust to the defendant. An injunction would not be in the public interest." These findings regarding the effect of an injunction are immaterial, in the view we take of the law, and we need not consider whether the evidence supports them. The court's other findings are supported by substantial evidence and we therefore accept them as correct. We do not understand either party to question any of these other findings which we understand the court to make. The Administrator concedes that the Company's violations were not wilful. It is clear that the Company made serious and costly efforts to comply with the law.

But it is also clear that in many hundreds of instances the Company failed to comply with the law. This suit was based upon a "spot check" which the Administrator made in a few departments of the Company's store. The Company does not question the correctness of the Administrator's statement that "the evidence showed without dispute that in a space of only five months in but seven of the 100 or more departments defendant in direct violation of the * * * Regulation, (1) made 3,838 sales at prices in excess of the legal maximum; (2) collected at least $4,623.15

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[4] We do not understand the court's findings to mean that the Company's violations of the Act were "unsubstantial" or that no future violations were likely to occur. The evidence would not support such findings. The Company says in its brief, "The Price Administrator contends that the Court erred in holding that 'the defendant would probably not continue to violate the Act and Regulations.' That was substantially what the Court said in its memorandum opinion, but in its formal conclusions the Court properly qualified the statement, for it is obvious that there will always be some mistakes no matter how hard the employees of the store try to comply with the provisions of the regulations."

more than it was legally entitled to do; (3) failed to include on the Cost-of-Living Statement which it was required to file with the appropriate War Price and Ration Board more than 460 articles which should have been included thereon; and (4) failed to describe with sufficient clarity more than 410 items scheduled on the Cost-of-Living Statement which it did file. * * * Wherever investigation was made violations were found."

Within the meaning of § 205 (a) the Company "has engaged in * * * acts or practices which constitute * * * a violation of * * * section 4." Many statutes are interpreted to mean that one who actually does what the statutes prohibit is guilty of violating them notwithstanding his good faith. "Many instances of this are to be found in regulatory measures in the exercise of what is called the police power where the emphasis of the statute is evidently upon achievement of some social betterment rather than * * * punishment * * *".[5] Statutes may be interpreted in this way despite the fact that they impose criminal penalties. In the case just quoted the Supreme Court interpreted in this way a statute which made it a crime to sell narcotics, as applied to a defendant who was not shown to have known that he was selling narcotics.

Our case is a clearer one for the application of the principle that good faith is no defense, since § 205 (a) imposes no criminal penalties. Its purpose is not in any degree to punish the defendant, but solely to protect the public. It is a police regulation of great scope and importance. Innocent non-conformity with the Price Control Act is as inflationary and as damaging to competitors and the public as guilty non-conformity. The intention of Congress in § 205 (a) to cover well-intentioned as well as [fol. 597] ill-intentioned conduct is emphasized by the contrast between the language which Congress used in this subsection and in the one which immediately follows it. § 205 (b), which imposes criminal penalties, deals with "any person who willfully violates any provision of section 4," while § 205 (a), which provides for injunctions, deals with "any acts or practices which constitute or will constitute a violation of any provision of section 4."

Despite the Company's past and present good intentions, by the express terms of the statute the Company's past

[5] *United States* v. *Balint*, 258 U. S. 250, 252.

violations authorized the District Court to enjoin future violations.[6] In order to justify the granting of an injunction under an express and unrestricted statutory authority, no balancing of equities is necessary and neither threatened irreparable injury nor lack of an adequate remedy at law need be shown. General equitable doctrines "do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective."[7]

The question remains whether the Act merely *authorized* the court to grant an order without regard to equitable considerations, such as the Company's good intentions and the probable effect of granting an order, or whether it *required* the court to do so. Unless it required the court to do so, Congress turned over to the court the important question whether the granting of an order against a violator of the Act should be a matter of course or should depend upon the general principles of equity. But Congress was free to decide that question and there was no apparent reason for leaving it to the court. We think Congress did not leave it to the court. The phrase "a permanent or temporary injunction, restraining order, or other order shall be granted", in its context, means in our opinion that an injunction or other order is to be granted as of course when violations of the Act are found. Only the affirmative or negative character of the order, and its other details, are left to the court's discretion.

To most laymen, the question whether the word "shall" in a statute is mandatory would doubtless seem to answer itself. The legal proposition that the word is not neces-

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[6] *Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 230; *Fox Film Co.* v. *Federal Trade Commission*, 296 F. 353 (C. C. A. 2d); *Federal Trade Commission* v. *Wallace*, 75 F. 2d 733 (C. C. A. 8th); *Educators Ass'n v. Federal Trade Commission*, 108 F. 2d 470, 473 (C. C. A. 2d); *Gimbel Bros.* v. *Federal Trade Commission*, 116 F. 2d 578 (C. C. A. 2d); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. 2d 618 (C. C. A. 6th).

[7] *United States* v. *San Francisco*, 310 U. S. 16, 31. *United States* v. *Adler's Creamery, Inc.*, 110 F. 2d 482 (C. C. A. 2d).

sarily mandatory and may be "merely directory" is a more or less technical one. Sometimes this proposition means only that violation of a statutory mandate may entail no consequences when the statute prescribes none; as when waivers of notice are allowed to validate a corporate meeting held without notice although a statute provides that notice shall be given.[8] Sometimes it means only that the author of a mandate may be privileged to change or break it. Thus it has been held that a court[9] or an administrative body[10] may waive some of its own rules despite the [fol. 598] presence in the rules of the word "shall", and that a legislature may change the means by which it has itself provided that process "shall" be served upon a corporation.[11] In some of the State court cases on which the dissenting opinion relies, the proposition is a euphemism which covers judicial refusal to follow a legislative mandate addressed to the court. In some contexts, perhaps, it has been found by way of genuine statutory construction that a particular "shall" was more or less equivalent to "may." It is nonetheless true that the word "shall" in a statute is normally "the language of command."[12] We think the word has its normal meaning in § 205 (a).

Since no two statutory uses of the word are identical in context, purpose, and legislative history, argument from one statute to another is not conclusive. But there is enough resemblance between the direction of Congress to the Board in the National Labor Relations Act and its direction to the Court in the Price Control Act to make pertinent the Supreme Court's view that the Board must issue a cease and desist order when it finds that an employer has engaged in unfair labor practices.[13] The *Jordan* case[13a], like the

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[8] *Butler Paper Co.* v. *Cleveland*, 220 Ill. 128, 77 N. E. 99.

[9] *West Wisconsin Ry. Co.* v. *Foley*, 94 U. S. 100.

[10] *United States* v. *Coe*, 67 App. D. C. 207, 91 F. 2d 238.

[11] *Railroad Co.* v. *Hecht*, 95 U. S. 168.

[12] Cardoza, J., in *Esco* v. *Zerbst*, 295 U. S. 490, 493. *Ex parte Jordan*, 94 U. S. 248, 251.

[13] "* * * § 10 (c) directs that when the Board finds that any person has engaged in unfair labor practices it 'shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * *

present case, involved a direction addressed by Congress to the courts. The Supreme Court said: "The allowance of an appeal under sect. 692, Rev. Stat., follows of course, if prayed for by one who has the right to it. The language of the statute is, '*shall* be allowed,' which means '*must* be allowed,' when asked for by one who stands in such relation to the cause that he can demand it." The cases on which the Company chiefly relies were decided under statutes which neither provide that an order "shall be granted" by the court nor direct any comparable language to the court. These cases, in our opinion, are not in point. The language of the Sherman Anti-Trust Act is that "The several district courts of the United States are invested with jurisdiction to prevent and restrain violations * * *."[14] The Federal Trade Commission Act provides that when a court is asked to review an order of the Commission it "shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the Commission, and enforcing the same to the extent that such order is [fol. 599] affirmed * * *."[15] In proceedings to review

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as will effectuate the policies of this Act. * * *." Notwithstanding the mandatory form of § 10 (c), its provisions in substance leave to the Board some scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an *affirmative* order. * * *." [Italics supplied.] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265. This implies that the provisions of § 10 (c) leave to the Board no scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring a *negative* ("cease and desist") order.

[13a] *Supra*, note 12.

[14] 26 Stat. 209 § 4; 15 U. S. C. § 4.

[15] 15 U. S. C. § 45(c); 38 Stat. 720, as amended.

The Federal Trade Commission Act provides also that when the *Commission* finds a prohibited act or practice the *Commission* "shall issue * * * an order * * * to

an order of the National Labor Relations Board the courts have "power * * * to make and enter * * * a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."[16] By the Agricultural Adjustment Act the district courts were "vested with jurisdiction specifically to enforce, and to prevent and restrain any person from violating, * * * any order * * * made or issued pursuant to this title * * *."[17] The Fair Labor Standards Act of 1938 provides that district courts "shall have jurisdiction, for cause shown * * * to restrain violations * * *."[18] Congress chose to use very different language in the Emergency Price Control Act. The Securities Act of 1933 and the Securities Exchange Act of 1934 provide that the court "shall" issue an order, but only "upon a proper showing";[19] a limitation which suggests incorporation of the general principles of equity.

Neither the context nor the legislative history of the Emergency Price Control Act suggests any unusual meaning of the word "shall." On the contrary, both confirm its common meaning. It is recognized that the use of "may" and "shall" in one sentence implies that each word is used in its own ordinary sense and not in the ordinary

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cease and desist from * * * such act or practice." 15 U. S. C. § 45(b). Some Circuit Courts of Appeals have thought that the Commission not only need not, but may not, issue an order to "cease and desist" from practices which have been abandoned and are not likely to be repeated. *John C. Winston Co.* v. *Federal Trade Commission*, 3 F. 2d 961 (C. C. A. 3d, 1925); *Federal Trade Commission* v. *Civil Service Training Bureau*, 79 F. 2d 113 (C. C. A. 6th). But *cf.* note 6, *supra*. The words "cease and desist," which may see to imply present continuance or probable repetition, are not present in § 205(a) of the Price Control Act; and the company concedes that its violations of the Act have not ceased.

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[16] 49 Stat. 454, 29 U. S. C. § 160 (e).

[17] 48 Stat. 675, 7 U. S. C. § 608a(6).

[18] 52 Stat. 1069, 29 U. S. C. § 217.

[19] 48 Stat. 86, 15 U. S. C. § 77t(b); 48 Stat. 899, 15 U. S. C. § 78u(e).

sense of the other.[20] A single sentence in § 205 (a) provides that the Administrator "may" apply for an order and that an order "shall" be granted. If Congress had been using "shall" in the sense of "may" there would have been no reason for using "may" instead of "shall" in regard to the Administrator.

When H. R. 5479, for which the present Act was substituted, was in the House of Representatives, Section 205 (a) read: " * * * upon a proper showing a permanent or temporary injunction, restraining order, or other order shall be granted without bond." Accordingly the House Committee on Banking and Currency said in its report: "Upon a proper showing a temporary or permanent injunction, restraining order, or other order is to be granted without bond."[21] But the Senate Committee struck out the words "upon a proper showing" and substituted the words "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." [fol. 600] The Committee's report said: "Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond."[22] The words "upon a proper showing," qualifying "shall be granted" in the Securities Exchange Act, had been thought to give a court

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[20] *Murray* v. *Edes Mfg. Co.*, 305 Mass. 311, 25 N. E. 2d 746; *State ex Inf. McKittrick*, 343 Mo. 98, 119 S. W. 2d 941; *Smith* v. *School Dist.*, 241 Mich. 366, 217 N. W. 15; *State ex rel Wendling Bros. Co.* v. *Board of Education*, 127 Ohio St. 336, 188 N. E. 566.

[21] H. R. Rep. No. 1409, 77th Cong., 1st Sess. (1941), p. 12.

[22] Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), p. 25. To say, as the Senate Committee's report does, that "courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case" (*Ibid.*, p. 10) is not, as the Company suggests, to imply that courts are authorized to refuse to issue any order to enforce compliance. The words "whatever order," like the words "other order" in Section 205 (a) itself, evidently refer to the fact that the section permits the court to choose between an injunction against violation of the act and an affirmative order requiring compliance.

discretion to deny an injunction when it would not be "consistent with the general principles of equity" to grant one.[23] We infer that it was precisely for the purpose of avoiding that result that the Senate Committee changed the language of § 205 (a). The Senate Committee made its report on January 2, 1942. It pointed out that the House of Representatives had acted before Pearl Harbor; that "what was before a moderate program of rearmament and friendly aid is now unlimited national mobilization in a war for survival"; that the House bill "must be reconsidered in the light of these changed conditions"; that "in amending the House bill, the committee has sought to strengthen it"; and, that "the committee has largely accepted the substantive provisions of he House bill, but regards prompt enactment of this stronger bill as imperative to the safety of our country."

When Congress passed the Emergency Price Control Act it realized that there was an emergency. It knew that the war was producing and would produce prodigious increases in public expenditures and private purchasing power together with a dearth of many things for which buyers compete. It knew that unless effective price control was achieved, these condition would force up prices and then wages to meet prices and then prices to meet wages, until and even after inflation became fantastic. It realized that, as the Senate Committee said, "of all the consequences of war, except human slaughter, inflation is the most destructive. * * * Rising prices and increases in the cost of living bring misery to our people, cause industrial unrest, and undermine our unity. * * * Living costs tend to rise more quickly than wages, [and] the burdens of war are haphazardly distributed, with the heaviest burden on the farmer, the salaried worker, the small investor, the pensioner, and the veteran, whose incomes cannot readily be expanded. Rising living costs mean labor disputes and spiraling wage demands. And the suspicion of profiteering causes discontent which hampers production as surely as the bombing of factories. Rising prices now foreshadow * * * deflation later with attendant depression and suffering. Such prospects and fears * * * sap energy and

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[23] *Securities and Exchange Commission* v. *Lawson*, 24 F. Supp. 360, 365 (D. Md.).

morale now. Rising prices limit production. For price uncertainties prevent future planning and long-term commitments which are an integral part of the industrial process. * * * Rising prices inevitably increase the cost of the defense program." [24]

[fol. 601] Inflation is infectious and cumulative. It cannot be prevented in general unless it is prevented in particular. The Emergency Price Control Act is designed to prevent inflation. To that end it provides various means. These include price fixing, subsidy payments, licensing, criminal penalties, damage suits, and the remedy which the Administrator seeks here. There is nothing new or strange in the belief of Congress that an injunction or other order, with the possibility of contempt proceedings, is an effective means of law enforcement. The legislative history of the entire Act, like that of § 205 (a), tends to show that Congress meant what it said and why it meant what it said when it provided that an order shall be granted upon a showing that the Act has been violated. The limitation upon the court's discretion is unusual, but the situation which evoked it is extraordinary. The emergency is more acute today than when the Act was passed. "Any easy attitude of the courts which even remotely suggests that the Act may be violated with impunity strikes at the entire enforcement problem * * *." [25]

Reversed.

CONCURRING OPINION

EICHER, C. J., D. C.:

I concur fully in Judge Edgerton's opinion, but upon reading Chief Justice Groner's dissenting opinion I deem it appropriate to add several supplemental observations. It is difficult for me to view an injunction which merely forbids violation of the law as a punishment. Further violations are not only threatened in this case, but are claimed to be unavoidable. If, after injunction, they do occur, and contempt proceedings follow, then for the first time do quasi-criminal sanctions come into play and penalties may

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[24] Sen. Rep. No. 931, 77th Cong., 2d Sess. (1942), pp. 2-3.

[25] *Henderson* v. *C. Thomas Stores, Inc.*, 48 F. Supp. 295, 301 (D. C., D. Minn.). Unreported District Court decisions on the questions before us are in conflict.

be imposed. Before doing so, courts can and will give full weight to a showing that violations have been inadvertent and innocent and not wilful, for in such an inquiry the courts are no longer under statutory mandate, but are exercising their inherent powers.

This leads me to observe that the Emergency Price Control Act is sui generis in one important respect. It has set up an Emergency Court of Appeals upon which Congress has conferred exclusive jurisdiction to try all questions affecting the validity of the Act and of regulations promulgated thereunder. If specific regulations cannot be complied with, the place to test them is not in this proceeding but in the forum that Congress has provided, or in Congress itself which gave those regulations the force and effect of law.

Also I would respectfully comment upon the dissenting opinion's quotation from the Report of the Senate Committee by pointing out that it refers to "orders to *enforce compliance.*" In a case where non-compliance is conceded, how can any discretion be gleaned from those words?

And, further, it occurs to me that the same thought pervades the words "or other order" in the statute, which are followed by the words "*shall* be granted *without bond.*" It is true they imply discretion to grant some other order than [fol. 602] an injunction, but I cannot believe they imply discretion to grant no order at all, the statutory showing of violation being present. To the contrary, the words "without bond" inexorably imply an order that otherwise would require bond, namely, an order for some sort of affirmative relief.

Finally, I believe that failure to cooperate with the Administrator where the statutory facts appear, would encourage resumption of violations and would amount to judicial modification of clearly announced Congressional policy.

Judge Edgerton concurs in this opinion.

Dissenting Opinion

Groner, C. J., Dissenting:

I think it not improper to state briefly the reason I am unable to concur in the Court's opinion. The record shows that after extensive hearings the District Court made find-

ings to the effect that though violations of the Price Control Act had been shown, they were, in the circumstances, neither numerous nor wilful and that defendant at all times after the passage of the Act attempt in good faith to comply with its provisions and took vigorous steps to do so, and that in those instances in which errors of overcharge were made the mistakes were corrected as soon as discovered. I mention these findings merely as background. I am far from thinking that, alone, they are enough. The significant thing to me is that the Court also made findings that prompt and proper steps had been taken by defendant to improve its control system so as to insure as nearly as possible future compliance with the provisions of the Act, and as a result of which there was no likelihood of avoidable violations and no reason to apprehend them.[1] Based on these findings and conclusions, the Court held that it was not in the public interest to issue an injunction and that to do so would be unjust to the defendant and "would have no effect by way of insuring better compliance

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[1] The opinion makes much of the fact that the trial court in stating that there was no likelihood of further violations of the statute, granted that the element of "human frailty", to which all flesh is heir, might possibly make for occasional future mistakes in the practical application of the complicated and often contradictory price regulations. This so-called concession the court obviously made as the result of its own finding that even the Administrator's experts in their examination of the defendant's methods had themselves made numerous mistakes. With this in mind the court very properly qualified its absolute finding that there would be no future violations by defendant, by adding, except such as resulted from human frailty. And this in turn was no more than the recognition by the court of the verity of Pope's Criticism that—

> "Whoever thinks a faultless piece to see,
> Thinks what ne'er was, nor is, nor e'er shall be."

It is therefore altogether inadmissible to argue the legal question which is the heart of this case from any other premise than the one stated in this dissent namely, the finding of the court of a manifestation of good faith by the defendant and no likelihood of further violation by it.

in the future." As the findings are abundantly supported by the evidence, it seems to me the conclusion that nothing would be accomplished by an injunction, and that therefore there was no necessity for it, was well within the District Court's judicial discretion and in accordance with established equitable procedure. The Administrator, however, insists that established equitable principles have no place in a case brought under the Price Control Act, because, [fol. 603] as he says, Congress in using the word "shall" obviously intended to coerce judicial action. This brings me then to the single question for decision—Does the Act, properly construed, command the granting of the injunction? Section 205 (a) provides:

> "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

As the opinion very well points out, the use by Congress of the word "may" in the forepart of the section, authorizing the Administrator to apply for an injunction, followed by the word "shall" in providing the action to be taken by the court, may, if taken literally, be said to indicate a compulsory purpose and as excluding the idea of discretion in the court to decide whether in a particular case the relief asked is necessary or proper, and that is what the opinion holds. Then, too, this view may be said to be strengthened when it is considered that the bill as it passed the House contained the provision authorizing an injunction "upon a proper showing," whereas these words were later stricken in conference and omitted in the bill as finally passed. But, notwithstanding all of this, I am by no means convinced either that the word "shall" of itself, or that the conference change to which I have referred, should be given the significance of exclusion of the

idea of judicial discretion. I think it is more reasonable and proper and more consonant with authority to consider both as subject to the necessary limitation that an equitable case has been made for the exercise of the power. More than appears, I think, is necessary to justify the assumption that Congress intended to coerce judicial action and to destroy judicial discretion and hence to require an injunction to issue, even where the court finds, as it did here, that the facts are such that to do so would accomplish no other result than is already accomplished by the voluntary action of the defendant.

In saying this I am not unmindful that the statutory use of "shall" ordinarily carries a mandatory connotation. But while this is true, it is also true that one of the outstanding and recognized exceptions is that in cases where the legislative direction is addressed to a court or a judge with relation to a proceeding in its nature equitable, peremptory phrasing which would operate to preclude the exercise of traditional judicial discretion is not and ought not to be given a literal interpretation, unless it is clearly certain that the legislature so intended. *Becker* v. *Lebanon & M. Ry. Co.*, 188 Pa. St. 484, 41 Atl. 612; *In re Rutledge*, 162 N. Y. 31, 56 N. E. 511; *Clancy* v. *Elroy*, 30 Wash. 567, 70 Pac. 1095; Sutherland, Statutory Construction (3d Ed.), Sec. 5810; Crawford, Statutory Construction, Sec. 267. Even where the legislature has used the unambiguous "must", [fol. 604] courts have reached the same conclusion. *State* v. *District Court*, 106 Mont. 272, 76 P. (2d) 634.

Some cases create a superficial, contrary impression. These are distinguishable, however, as cases in which the terms of the applicable statute are not addressed to the court, or the type of proceeding is not in its nature equitable. See for example *Mack* v. *State*, 203 Ind. 355, 180 N. E. 279, which involved the mandatory death penalty statute; *Lynn* v. *Lynn*, 256 Pa. 563, 100 Atl. 975, involving an action of replevin; *State* v. *Mavrikos*, 148 Wash. 651, 269 Pac. 805, statutory confiscation of equipment used in illegal fishing. But with exceptions of this character the rule stated above is generally applied; and this rule obtains even as to statutes in which in addition to the direction that the court "shall", the word "may" is also elsewhere used. *State* v. *Braun*, 62 Ida. 258, 110 P. (2d) 835.

Nor do I find anything in the Act, taken as a whole, which indicates a purpose to make the injunction provision man-

datory in every case. Specific punishments are otherwise provided for in other sections for wilful violations of the Act. And it is not going too far to assume that these cover the punishment field. To adopt the majority view would add, as the District Court found, an additional punishment for an inadvertent and innocent violation. And this, contrary to the well established rule that the writ of injunction is used only to stop existing or threatened violations and not to punish past offenses. *Swift & Co.* v. *U. S.*, 276 U. S. 311, 326; *Walling* v. *Shenandoah-Dives M. Co.*, 134 F. (2d) 395. Considered in this view, I think the language of the section should be taken only as a grant of authority to act in accordance with well established and well understood equitable procedure; and my view, to some extent at least, is fortified by the Report of the Senate Committee on the section in question, where it is said:

> "Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case."

And this view of the Committee is grounded on the language used in Section 205, where it is said that upon a showing by the Administrator that the person proceeded against has engaged in the unlawful practice denounced, the court shall grant a permanent or temporary injunction, restraining order, "*or other order,*"—additional words, which to me imply discretion rather than coercion, and which otherwise are useless and redundant.

And I find neither in the opinion nor in the Administrator's brief any authority convincingly to the contrary. The Supreme Court case of *Labor Board* v. *Penn. Greyhound Line*, 303 U. S. 261, 265, relied upon in the opinion, I think more persuasive of the view I have stated than the view for which it is cited. There the language of Chief Justice Stone that "notwithstanding the mandatory form of Section 10 (c), its provisions, in substance, leave to the Board some scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order, and in choosing the particular affirmative relief to be ordered," indicates to me that there may properly be [fol. 605] found in the present Act, as applied to the facts

of this case, compelling reasons for "some scope" in the exercise of judicial discretion.[2]

Without more, therefore, I am of opinion that the District Court had authority, upon the finding that the practices complained of were innocently done and would not be repeated, to exercise discretion to refuse injunctive relief. But I am also of opinion that the District Court should not have dismissed the complaint, but should have entered an order retaining it on the docket, with the right to the Administrator, on reasonable notice and a showing that violations of the Act had been resumed, to again apply to the court for injunctive relief.

[fol. 606] In United States Court of Appeals for the District of Columbia, April Term, 1943

No. 8498

Prentice Brown, Administrator, Office of Price Administration, Appellant,

vs.

The Hecht Company, Appellee

Appeal from the District Court of the United States for the District of Columbia

Judgment—Filed July 22, 1943

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, reversed, and that this cause be, and it is hereby.

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[2] Because of the conjunctive union of the terms "cease and desist" and "affirmative relief" in the Labor Board Act, it would seem a more reasonable inference that whatever the Supreme Court stated concerning the one would apply with equal force to the other.

remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court.

Per Mr. Justice Edgerton.

Dated July 22, 1943.

Separate concurring opinion by Mr. Chief Justice Eicher of the District Court of the United States for the District of Columbia.

Dissenting opinion by Mr. Chief Justice Groner.

[fol. 607] IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD FOR PURPOSES OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES—Filed August 13, 1943

The Clerk will please prepare a certified transcript of the record on petition to the Supreme Court of the United States for review on writ of certiorari in the above entitled cause, and include therein the following:

(1) the appendices to the briefs of the parties in this court;

[fol. 608] (2) the minute entry of argument;

(2) the minute entry of argument;

(3) the opinions of this court;

(4) the judgment of this court;

(5) this designation as filed;

(6) the Clerk's certificate.

The Clerk is also requested to send to the Clerk of the United States Supreme Court the original record now on file in his office, which will be returned to him when the case has been disposed of by the Supreme Court.

Charles A. Horsky, Spencer Gordon, Attorneys for The Hecht Company, Appellee.

August 13, 1943.

Received a copy of the foregoing Designation of Record this 13th day of August, 1943.

Fleming Janney, Jr., Attorney for Appellee.

[fol. 609] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 610] Supreme Court of the United States

Order Allowing Certiorari—Filed October 18, 1943.

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 611] Supreme Court of the United States

Stipulation as to Record—Filed October 28, 1943

Subject to This Court's Approval, It Is Hereby Stipulated and Agreed, by and between the attorneys for the respective parties hereto, that for the purpose of the hearing on Writ of Certiorari, the printed record shall consist of the printed record on Petition for Writ of Certiorari, excepting only the Appendix to the Petitioner's brief in the United States Court of Appeals for the District of Columbia, which shall be deleted.

It Is Further Stipulated and Agreed that either of the parties hereto may refer in their briefs and argument to the original record filed in the Supreme Court of the United States, which has not been printed.

Dated this 26th day of October, 1943.

Charles A. Horsky, Attorney for Petitioner.

Dated this 28th day of October, 1943.

Charles Fahy, Solicitor General, Attorney for Respondent.

FILE COPY

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No. 316

Supreme Court of the United States

OCTOBER TERM, 1943

THE HECHT COMPANY, *Petitioner*,

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

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Supreme Court of the United States

OCTOBER TERM, 1943

No.

THE HECHT COMPANY, *Petitioner*,

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The Hecht Company, petitioner herein, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia in the above case entered on July 22, 1943, reversing the decision of the District Court.

OPINIONS BELOW

The findings of fact, conclusions of law, and memorandum opinion of the District Court (R. 441-454) are reported in 49 F. Supp. 528. The opinion of the Court of Appeals for the District of Columbia (R. 604-615) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered July 22, 1943 (R. 616). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 25, 1925.

QUESTION PRESENTED

Whether, despite findings, *inter alia*, that "the defendant and its employees have attempted in good faith to comply with the [Emergency Price Control] Act, and have taken vigorous steps to do so"; that "the compliance thus resulting has been very substantial"; that "there were no wilful violations"; that "mistakes have been corrected as soon as discovered, and vigorous steps have been taken against their happening again"; that "these acts have all been done voluntarily and at considerable expense, in a spirit of full cooperation with the Office of Price Administration and with its aims and policies"; that "the defendant has improved its system of control so that the indication is that there will be no further violations except such as may be caused by human frailties"; that "no one has suggested to the defendant how its present method of compliance can be made better"; and that "an injunction would have no effect by way of insuring better compliance in the future", "would be unjust to the defendant", and "would not be in the public interest", nevertheless Section 205(a) of the Act requires that upon a finding of a violation of the Act or a regulation issued thereunder the court is deprived of all discretion and must issue an injunction as a matter of course without regard to any equitable considerations.

STATUTE AND REGULATIONS INVOLVED

The relevant portions of the Emergency Price Control Act of 1942 (Act of January 30, 1942, c. 26, 56 Stat. 23, 50 U. S. C. Sec. 901) and the General Maximum Price Regulation (7 Fed. Reg. 3153, April 30, 1942) were set out in the appendix to the appellee's brief in the court below and are included in the Record in this Court (R. 596-602).

STATEMENT

This is a proceeding by which the Price Administration seeks an injunction against The Hecht Company, a Washington, D. C., department store, to restrain it from violating the General Maximum Price Regulation (7 Fed. Reg. 3153) promulgated under the Emergency Price Control Act of 1942 (56 Stat. 23). Upon the filing of the complaint on December 8, 1942 (R. 1) a temporary restraining order was entered *ex parte* (R. 6-7). By agreement the case was then advanced and tried on the merits (R. 9-10). After the trial, the District Court dismissed the complaint and dissolved the temporary restraining order (R. 455). Its findings of fact and conclusions of law (R. 447-454) present a rather complete picture of the case as found by the court after a trial of several weeks, and are therefore set out in full, as follows.[1]

1. Leon Henderson, the original plaintiff, was the Price Administrator. During the progress of the trial he resigned, and Prentiss M. Brown, his successor in that office, was substituted as plaintiff.

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[1] The references to the record (the Appendix to the Administrator's brief in the Court of Appeals) are to some of the testimony supporting the findings.

2. Defendant corporation operates a large department store in Washington, D. C. The store enjoys an excellent reputation, and its business has grown from a volume of about $500,000 in 1894 to about $20,000,000 in 1942. (R. 427).

3. The Emergency Price Control Act was approved January 30, 1942, and, prior to the promulgation of the General Maximum Price Regulation the application of which is involved in these proceedings, The Hecht Company had already taken steps to prepare itself for compliance with whatever price control regulations might be issued. (R. 76, 122-123). One of its executives had gone to Canada to study and report on the Canadian system of price control. (R. 428). The Hecht Company had created a new section known as the Price Control Office with office space set aside within the store which was to be devoted entirely to price control. (R. 122-123). This was headed by Mr. Robert Levi, a well educated and well trained employee who had a wide knowledge of the operation of the store. (R. 75-76, 427-428). Mr. Levi was told to employ such persons as were necessary and was given an unlimited budget. (R. 80, 429, 433-434). He organized his section and assumed the direction of compliance with certain price regulations relating to nylon hose, household mechanical refrigerators, and household vacuum cleaners which had been put in effect prior to the promulgation of the General Maximum Price Control Regulation. (R. 76).

4. Prior to the promulgation of the General Maximum Price Control Regulation, The Hecht Company had also made evident its desire to cooperate with the Office of Price Administration. (R. 78, 135, 430). Its store was made available to members of the staff of the

Office of Price Administration on numerous occasions, and Mr. Dulcan, the general manager, proffered the store and its personnel as a testing or proving ground or laboratory, in which the Office of Price Administration might check or experiment with any regulation which might be issued. (R. 134-135, 429-430). The Hecht Company staff prepared drawings which were used as illustrations in a bulletin later issued by the Office of Price Administration. (R. 420-422).

5. General Maximum Price Regulation, promulgated by the Price Administrator, was dated April 28, 1942, was published in the Federal Register April 30, 1942, and was to become effective as to manufacturers on May 11, and as to retailers on May 18, 1942. It provided that a seller's maximum price for any commodity should be, in those cases in which the seller dealt in the same or similar commodities during March 1942, the highest price charged by the seller during March 1942 for the same commodity, or if no charge was made for the same commodity, for the similar commodity most nearly like it, and in those cases in which the seller did not deal in the same or similar commodities during March 1942 the highest price charged during that month by the most closely competitive seller of the same class for the same commodity, or if no charge was made for the same commodity for the similar commodity most nearly like it. It was provided that for the purpose of the regulation the highest price charged by a seller during March 1942 should be the highest price which the seller charged for a commodity delivered by him during March 1942, or if the seller made no such delivery during March 1942, his highest offering price for delivery during that month. It was provided that in cases where the same or similar commodi-

ties had not been sold by the seller or by his competitors the seller's maximum price should be determined by the seller selecting from the same general classification and price range as the commodity being priced the comparable commodity for which the seller could establish a price and of which the seller delivered the largest number of units during March 1942, that the seller should divide his maximum price for that commodity by his replacement cost of that commodity, and should multiply the percentage so obtained by the cost to him of the commodity being priced, and that the resulting figure should be the maximum price of the commodity being priced. The regulation also provided that a seller should preserve existing records relating to prices for commodities delivered during March 1942, and offering prices during that month; that he should prepare prior to July 1, 1942, and thereafter keep for examination, a statement showing the highest prices charged for commodities delivered during March 1942 and offering prices for delivery during that month together with an appropriate description or identification of each such commodity; and that he should keep records relating to the prices charged for commodities sold after the effective date of the regulations and records showing the basis on which he determined maximum prices for those commodities. The regulation also provided that in the case of certain commodities designated as cost-of-living commodities and listed in an appendix to the regulation every seller should on and after May 18, 1942, mark the maximum price of such commodity on the commodity or post such price in the store, and that lists of such commodities with the maximum selling price and with appropriate descriptions should be filed in the Office of Price Administra-

tion on or before June 1, 1942,[2] and thereafter kept up to date by monthly supplements. (7 Fed. Reg. 3153).

6. Mr. Levi secured an advance copy of General Maximum Price Regulation, several days before it was formally published, and immediately mapped out and put in effect a series of moves to bring The Hecht Company into compliance. (R. 80-82). This work had to be done rapidly because of the limited period of time after April 28, 1942, the date of the promulgation of the General Maximum Price Regulation and before May 18, 1942, the date on which the maximum prices were to become effective and the posting made (R. 95, 98), and before June 1, 1942, when the list of cost-of-living commodities was to be filed. (R. 95, 106-107). The Washington store of The Hecht Company contained 107 selling departments, each of which was in effect a small store. (R. 433). The head of each department was called a "buyer", some of whom had charge of more than one department. (R. 77-78, 432-433). It was the duty of the buyer to order the goods for his department, to price them, to sell them, and generally to manage the department. (R. 77-78, 432-433). The primary responsibility for compliance with the various aspects of the regulations was placed on the buyers in the various departments. (R. 18-19, 98-99, 124, 145, 432). This was the only course that could have been followed, since only the buyers were sufficiently well acquainted with the stock and the operation of their departments to be able to determine what deliveries had been made in March, 1942, and at what prices, and to compare the articles on hand with the articles delivered in March. (R. 98-99, 145-146).

[2] By a bulletin issued May 22, 1942, this date was extended to July 1, 1942 (R. 95, 107).

To insure that the buyers accepted and fulfilled the responsibility thus imposed upon them, Mr. Levi interpreted the regulations and applied them to the particular problems of the store, prepared and distributed memoranda and forms (R. 18-19, 82, 85-91, 96-101, 103-105, 107-111, 113-114, 136-137, 139, 150-154), conducted frequent meetings of the buyers (R. 78-79, 81, 92-94, 103, 135, 144-146, 155-156, 430), answered questions (R. 93, 96-97), and in general made the buyers aware of what had to be done to comply with the regulations and kept track of their performance. (R. 116-117). Mr. Levi devoted all of his time to this work and he had seven assistants who devoted all of their time to it. (R. 97). He kept closely in touch with developments at the Office of Price Administration (R. 168, 149-150, 154-155), and subscribed to a number of services which kept him informed of new regulations and interpretations. (R. 79). About June 20, 1942, Mr. Levi resigned to become an Ensign in the United States Coast Guard (R. 75, 122), and his place was taken by Mr. Etelson (R. 17, 19), who had been with the store for many years (R. 133, 433) and was well qualified to carry on the work. (R. 132-134, 433). Mr. Etelson had been prepared for the post by Mr. Levi for about a month before Mr. Levi left the store. (R. 135-136). From the time he replaced Mr. Levi, Mr. Etelsosn continued the program of educating and supervising the staff of The Hecht Company in order to insure compliance with the regulations of the Office of Price Administration. (R. 136-137, 144-157).

7. Notwithstanding the work of Mr. Levi and Mr. Etelson the buyers made mistakes. (R. 158, 160). The Washington store of The Hecht Company has approximately two thousand employees (R. 425). Its inventory of January 30, 1942, showed in excess of one mil-

lion two hundred thousand items of merchandise (R. 401); it had between January 1, 1942, and November 1, 1942, some fifty-four thousand and thirty transactions in the furniture departments alone. (R. 336). A transaction includes any number of items bought by a customer at the time of the transaction. The application of the regulations to the pricing of a particular article often involved interpretation of the regulations as well as exact knowledge of the nature of the article, whether the same or similar articles had been delivered in March 1942, etc. (R. 106-107, 110-113, 131-132, 134-135). The buyers were merchants who were not trained in such interpretation. (R. 77, 124, 432). The correct pricing of the articles was made difficult by the novelty of the regulations (R. 78, 134-135), by the large volume of articles (R. 401), by the fact that the comparisons were with deliveries two months before as to which it was often hard to find adequate records. (R. 249-251). The buyers were further confused, and the work of Mr. Levi and Mr. Etelson and the Price Control Office of the store was made much more difficult, by the fact that there were numerous other regulations of the Office of Price Administration (R. 99-103, 108, 116, 125-126, 136, 148-152, 192-193), many of which in whole or in part were applicable to the store (R. 100), and which were all different from General Maximum Price Regulation (R. 100-101, 108-110), and many of which differed from each other in their method of determining prices (R. 103, 136-140, 150-152), including regulations relating to summer seasonal commodities, women's, girls' and children's outwear garments, men's and boys' tailored clothing, women's fur garments, fall and winter seasonal commodities, bed springs, waterproof rubber footwear, stirrup pumps, phonograph records,

paper products, corded yarn garments, and women's silk hosiery (R. 99-100, 114-116), and in addition were numerous amendments issued from time to time by the Office of Price Administration of not only the General Maximum Price Regulation but also of the other Maximum Price Regulations. (R. 139-142). Mistakes in pricing were caused by difficulties and delays in determining what articles had been delivered in March and at what prices (R. 196-197, 236-237, 243-246, 287-289), occasionally errors would be made because of human mistakes in listing, typing or copying (R. 143, 175-178, 203, 234, 240-241, 249, 252, 256, 259, 294-295), and in some instances the buyers permitted articles to be sold before the proper price had been established for them. (R. 287-289). In a few instances buyers erroneously believed the prices could be equalized so that items of the same value would not be sold at different prices. (R. 162, 178, 186-187, 216-219). Mistakes were made in listing owing to the fact that some of the buyers misinterpreted the requirement for listing all items sold or delivered for sale in March, and listed only a representative selection of goods showing each price range, style and cost, but not each source or style number, and the same misunderstanding caused the omission of items newly received which were similar to items already listed. (R. 158-159, 181, 215). In one department a buyer, whose listing was otherwise quite complete, erroneously believed that slippers, play shoes, and rubbers were not cost-of-living commodities and that they did not have to be listed. (R. 203, 205, 209). These mistakes in pricing and listing were all made in good faith and without intent to violate the regulations. (R. 141-142, 190-191). The performance of the store as to posting was excellent. (R. 117-121, 224-228, 404-420).

8. In the latter part of September 1942, the Office of Price Administration commenced an investigation which continued for approximately six weeks and in which ten people took part from time to time. (R. 17, 20, 74-75). The Hecht Company gave the investigators every possible help, and made available for assistance to the investigators its own personnel, including Mr. Etelson, the Price Control Administrator of the store, and the buyers in the departments which were under investigation. (R. 18, 157, 181, 434, 437-438). The services of such people were quite largely utilized by the investigators. The investigation disclosed that buyers had made the mistakes set forth in the preceding paragraph. The complexity of the subject caused the investigators sent by the Office of Price Administration also to make numerous mistakes in their report. (R. 157, 160, 173-174, 176, 178-179, 207, 250, 290, 301-303).

9. The mistakes brought to light by the investigation were at once corrected (R. 142-144, 182-183, 187, 190, 203, 214-215); and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future. (R. 282 ff., 377-378, 437). Mr. Etelson's staff was increased several times (R. 143, 156, 286, 434), until it reached the number of twenty-eight employees who were engaged under his direction in seeing that the store complied with the regulations as to price control. (R. 156-157, 286 424-425). New methods of control were instituted so that by early November 1942 the system was as follows (R. 230-235, 282 ff.): Copies of all orders for articles go to the store's price control office. If it is a re-order of an article already registered at the price control office the buyer must put on the copy in green ink the page and line number at which the article is registered

in the ceiling price book. If the order is for a new article the order must have attached to it a form supplied by the store which indicates the basis of the comparison in accordance with the procedure outlined in paragraph 5, supra, or the method of establishing the ceiling price for the new item if it is covered by a regulation other than the General Maximum Price Regulation. The price control office checks the form to see that it is properly filled out, that the article upon which the comparison is based is listed, and at the price as indicated on the form, and that the comparison appears to be a proper one. Where goods are ordered to be sold in the future and the price cannot be established at once the form is left blank, and a statement is attached that the goods must not be brought from the warehouse to the store until the buyer has been notified and a ceiling price established. After a copy of the order has gone through the price control office it goes to the invoice office to be held until the merchandise arrives. It is then matched against the merchandise, and the invoice office puts on the invoice in red ink the retail price and in green ink the ceiling price and then sends the form back to the price control office, thus showing that the goods have arrived and have been priced. The invoice then goes to the markers, who make up the price tickets and put on them the retail and ceiling prices. The price tickets are then affixed to the items. No article can go on the floor of the store until all this has been done. Moreover, although the regulations provide that the ceiling price need be stated only on cost of living commodities the store is now putting the ceiling price on every article that comes in. The payroll of the price control office for the week ending December 19, 1942, had reached the sum of $853.00

for employees who devoted all their time to that work. Taking the proportion of the time of other employees which was devoted to this work the additional sum of $1,267.50 was expended at that time weekly by The Hecht Company in complying with the regulations. (D. Ex. 78; R. 424 et seq.).

10. It has always been the policy of The Hecht Company to give a customer credit for any overcharge which may have been discovered by the store, and The Hecht Company is making repayment of all overcharges brought to light by the investigation in case of customers who can be identified. The Company proposes to contribute to some local charity the amount of any such overcharges which cannot thus be allocated. (R. 437).

11. December 8, 1942, Leon Henderson who was then the Price Administrator instituted this suit, asking that this defendant be enjoined from violating the General Maximum Price Regulation or any regulation adopted pursuant to the provisions of the statute establishing maximum prices or requiring the making or keeping of records or the making of reports. The defendant received no warning before the institution of the suit. (R. 122-123, 437). There has never been any refusal by the store or any of its employees to comply with any orders or requests of the Office of Price Administration. (R. 122-123, 434 et seq.).

12. The defendant and its employees have attempted, in good faith, to comply with the act, and have taken vigorous steps to do so. (R. 155-157). The compliance thus resulting has been very substantial. (R. 157). Violations have occurred, but they have not been numerous in view of the difficulties involved in the defendant's efforts to comply. There were no wilful

violations. Mistakes have been corrected as soon as discovered (R. 142-144), and vigorous steps have been taken to insure against their happening again (R. 153-154, 230-235), and to combat the difficulties which arise from human frailty. These acts have all been done voluntarily and at considerable expense (R. 422 et seq.), in a spirit of full cooperation with the Office of Price Administration and with its aims and policies. (R. 117, 144, 431-434). The defendant's system of control has been greatly improved (R. 230-235, 282 ff.), and no one has suggested to the defendant how its present method of compliance can be made better. (R. 122-123, 234). An injunction would have no effect by way of insuring better compliance in the future, and would be unjust to the defendant. An injunction would not be in the public interest.

Based on the foregoing findings, the court entered conclusions as follows (R. 1185-6):

1. Section 205(a) of the Emergency Price Control Act of 1942 does not require this Court automatically to issue an injunction in any case where violations of the statute are shown or admitted.

2. The purpose of an injunction is to deter rather than to punish, and an injunction should not issue unless thereby better compliance with the law may be enforced. Each case must be measured and decided according to its own circumstances, and the Court may exercise its discretion in accordance with the equities of the case.

3. The complexity of the regulations and the difficulty of compliance are not in themselves defenses in this case, but may be considered in connection with other evidence bearing on the extent of the defendant's efforts to comply.

4. Where the defendant has made a determined effort to comply with the regulations issued under the Emergency Price Control Act of 1942, and where violations were the result of errors on the part of employees of the defendant made in good faith, and where the attitude of the defendant is not antagonistic, but is cooperative, and where the defendant has improved its system of control so that the indication is that there will be no further violations except such as may be caused by human frailties, an injunction would be unjust to the defendant and would not be in the public interest and this court should decline to issue an injunction.

On appeal by the Price Administrator, the Court of Appeals for the District of Columbia, by a divided Court, reversed the decision of the District Court on July 22, 1943 (R. 616).[3] The Court felt compelled to reverse on the theory that under Section 205(a) "an injunction or other order is to be granted as of course when violations of the Act are found" (R. 607).

On August 11, 1943, the Court below stayed its mandate pending a determination by this Court, provided that the petition for certiorari were filed by September 2, 1943.

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[3] It may be noted that the results of the two decisions below are singularly inconclusive. By reason of the fact that one of the majority justices in the Court of Appeals was a District Judge the issue in this case has been passed upon by two District Judges and two Justices of the Court of Appeals, and in each group there has been an even division of opinion.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

(1) In holding that Section 205(a) of the Act removed all discretion from the District Court and made it mandatory that an injunction be granted when a violation of the Act is found.

(2) In holding that the District Court was required to issue an injunction against petitioner upon the facts found in this case.

(3) In reversing the judgment and order of the District Court.

REASONS FOR GRANTING THE WRIT

1. The instant case presents a question of the utmost importance in the interpretation of a major war statute—a question which has not been, but which should be, decided by this Court. Probably no statute in recent times has had such widespread application to almost every aspect of our national life as the Emergency Price Control Act of 1942, the statute here involved. Moreover, because the issue in the instant case is the manner in which the courts are to aid in enforcing any and all of its provisions by injunctive process, perhaps no single issue arising under that statute will have such widespread effect as that involved in the present case.[4]

Section 205(a), relating to injunctions, provides as follows:

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[4] In a motion to advance the case for trial counsel for respondent Administrator stated: "The case involves a question of great public importance with respect to the administration of the Emergency Price Control Act of 1942. It is highly desirable in the administration of that Act and in the entire effort by the plaintiff Administrator that the case be finally decided as soon as possible."

> "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such a person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

The majority of the court below has adopted the Administrator's extreme construction of this section. It has made the statute, in effect, a punitive, not an injunctive, measure. An injunction must always issue, the majority below concluded, not because of the probabilities of *future* harm to the public interest, but solely because of the fact that an unintentional violation of the statute or the multifarious regulations issued under it has occurred in the *past*. In the words of the majority opinion (R. 607):

> "The phrase 'a permanent or temporary injunction, restraining order, or other order shall be granted', in its context, means in our opinion that an injunction or other order is to be granted as of course when violations of the Act are found."

Of course, under this interpretation, the federal equity courts are shorn of every vestige of discretion or equitable power under this Act. Their function becomes that of criminal courts—to determine a past violation—and the injunction becomes purely a penalty. Indeed, in the view of the majority below, the court lacks even the discretion accorded to a criminal court; the

latter may suspend sentence, but the equity court has no choice but to punish, no matter what the circumstances may be.

We submit that the view of the majority is in error, and that the dissenting Justice below was correct. In his view, and in ours, the purpose of an injunction is to deter rather than to punish, an injunction should not issue unless thereby better compliance with the law may be enforced, and a court of equity has discretion under the statute to act in each case as the equities require.

Hitherto, at least, in public as well as private litigation, it has been axiomatic that injunctions have been *framed and issued* in terms of the court's judgment of the necessities of the future. The court in *Fleming* v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940) stated: "It would seem to be elementary that the purpose of an injunction is to deter rather than to punish." The same view is stated in *Walling* v. *Shenandoah-Dives Mining Co.*, 134 F. (2d) 395, 397 (C. C. A. 10th, 1943):

> "An injunction may not be employed to punish past violations, or to simply establish that violation had occurred. Its function is to stop existing violations or prevent further infractions if there is reason to believe that they may occur."

Decisions to the same effect are numerous in both the Federal and state courts. See, *e.g.*, *Swift & Co.* v. *United States*, 276 U. S. 311, 326 (1928); *Shore* v. *United States*, 282 Fed. 857, 859 (C. C. A. 7th, 1922); *Blease* v. *Safety Transit Co.*, 50 F. (2d) 852, 856 (C. C. A. 4th, 1931); *American Mercury* v. *Chase*, 13 F. (2d) 224, 225 (D. Mass. 1926); *Fleming* v. *National Bank of Commerce*, 41 F. Supp. 833 (S. D. W. Va. 1941); *Walling* v. *Builders' Veneer and Woodwork Co.*, 45 F. Supp.

808 (E. D. Wis. 1942); *Nann* v. *Raimist*, 255 N. Y. 307, 174 N. E. 690, 694 (1931); *Exchange Bakery & Restaurant Inc.* v. *Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927); *Longshore Printing & Pub. Co.* v. *Howell*, 26 Ore. 527, 38 Pac. 547 (1894); *Parkinson Co.* v. *Building Trades Council*, 154 Cal. 581, 98 Pac. 1027 (1908); Joyce, *Injunctions* (1909) Sec. 41.

The decision of the majority below that Congress in the Emergency Price Control Act jettisoned all prior doctrines and embarked upon a radically different course is based upon the use of the words "shall be granted" in the clause in Section 205(a) which states that "upon a showing by the Administrator that such person has engaged or is about to engage in any such [illegal] acts or practices a permanent or temporary injunction, restraining order or other order shall be granted without bond." The combination of the disjunctive use of "has engaged" and "shall be granted" is advanced as proof that under the Emergency Price Control Act, "an injunction is to punish rather than to deter." The context and the legislative history fail to bear out any such extraordinary result.

Under the Act, a judgment at law may be obtained by showing simply that a violation has occurred, and treble damages are provided. Section 205(e), R. 597. A criminal penalty may be assessed, but only where wilful violation is shown. Section 205(b), R. 597. We believe that the proceeding for an injunction, which must be brought in a court of equity under Section 205(a), occupies a middle ground where the court has discretion to consider the equities of the particular case and to enter such decree as may seem proper.

Moreover, Section 205(a) itself is by no means as categorical as the court below indicates. Section 205(a) says that "a permanent or temporary injunction, re-

straining order *or other order* shall be granted without bond." By the inclusion of the words "or other order" the court presumably is left free to enter such order as the equities of the case may require, either by granting an injunction as to some of the acts complained of, or as to some of the defendants, or by dismissing the case entirely, as was quite properly done by the District Court in this case. The implication by the court below (R. 607) that the phrase "or other order" refers solely to an *affirmative* order is plainly hypothesis. Although it is a possible construction of the phrase, it seems obvious that if Congress had intended to tie the hands of the equity courts and, contrary to all precedent, deprive them of every vestige of discretion, it would have used language which could have left no doubt as to its intention—such as "a permanent or temporary injunction or restraining order must be granted", or "a permanent or temporary injunction or restraining order or other order enforcing compliance must be granted." This it did not do.

Nor is the use of the word "shall" in the phrase "shall be granted" adequate to sustain the decision below. "Shall" is not necessarily mandatory. When it is used in a grant of authority by the legislature to the judiciary, it is ordinarily not mandatory, but is the equivalent of "may". *Becker* v. *Lebanon & M. Ry. Co.*, 188 Pa. 484, 41 Atl. 612 (1898); *Cairo and Fulton Railroad Co.* v. *Hecht*, 95 U. S. 168 (1877); *United States ex rel etc.* v. *Coe*, 67 App. D. C. 207, 91 F. (2d) 238 (1937); *In re Laub*, 343 Pa. 86, 21 A. (2d) 575 (1941); *In re Supervisor of Nether Providence Tp.*, 215 Pa. 119, 64 Atl. 443 (1906); *Clancy* v. *McElroy*, 30 Wash. 567, 70 Pac. 1095 (1902); *Fagan* v. *Robbins*, 96 Fla. 91, 117 So. 863 (1928); Black, *Interpretation of Laws* (2d ed.) p. 553.

The legislative history of the provision is not as full as it might be, but it bears out our interpretation of Section 205(a), under which the court has discretion to enter the order which is required by the equities of the case. The Senate Committee which reported Section 205(a) in its final form, stated in its report (Sen. Rep. No. 931, 77th Cong., 2d Sess. p. 10):

> "(c) *Suits to enjoin violations—In common with substantially all regulatory statutes,* the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. *Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case.*" (Italics ours).

In the face of that language, which places the injunctive provisions in the same category as "all regulatory statutes", and which states that the courts are to enter whatever order is proper "*to enforce compliance*", little if any weight can be attached to the unexplained and probably stylistic change made by the Senate Committee, upon which the Administrator strongly relies. This change was simply the omission of the phrase "upon a proper showing" in the House draft of the bill, which had stated that "upon a proper showing a permanent or temporary injunction, restraining order, or other order shall be granted without bond." Certainly "substantially all regulatory statutes" leave the court some discretion in determining whether an injunction shall issue—or, in other words, leave the court a court of equity. See, *e. g., Walling* v. *T. Buettner & Co.*, 133 F.

(2d) 306 (C. C. A. 7th, 1943); *Fleming* v. *National Bank of Commerce*, 41 F. Supp. 833 (S. D. W. Va. 1941); *United States* v. *United States Steel Co.*, 251 U. S. 417; 452 (1920); *Securities & Exchange Commission* v. *Lawson*, 24 F. Supp. 360 (D. Md. 1938); *United States* v. *Adler's Creamery*, 107 F. (2d) 987, 990 (C. C. A. 2d, 1939) and 110 F. (2d) 482 (C. C. A. 2d, 1940); *Federal Trade Commission* v. *Civil Service T. Bureau*, 79 F. (2d) 113, 115 (C. C. A. 6th, 1935). Certainly the Court of Appeals admits that the order which it says must be entered is not one necessary "to enforce compliance". Whatever the reason for the change by the Senate Committee, the Committee's report, quoted above, establishes that it was *not* what the court below thought it was: a drastic and unprecedented withdrawal of all discretion from the equity courts, and the transformation of an injunction into a pure penalty. The majority of the Court of Appeals must have been unaware of the direct inconsistency between the language of the Senate Report—in common with substantially all regulatory statutes"—and the concluding passage of its opinion—"the limitation upon the court's discretion is unusual, * * *" (R. 611). Yet the inconsistency indicates how widely at variance are the decision below and the consequences which Congress intended.

Both on the context and on the legislative history, we submit that the dissenting judge below was correct in concluding (R. 613):

> More than appears, I think is necessary to justify the assumption that Congress intended to coerce judicial action and to destroy judicial discretion and hence to require an injunction to issue, even where the court finds, as it did here, that the facts

are such that to do so would accomplish no other result than is already accomplished by the voluntary action of the defendant.

Particularly is this so when the construction for which the Administrator contends, and which was adopted by the majority of the court below, raises serious questions with respect to the status and functions of equity courts in the federal system. By long tradition, equity courts have been able to exercise discretion, to render a decree consonant with all of the facts and circumstances—in other words to do equity. Under Article III, Section 2 of the Constitution, the lower federal courts are given a jurisdiction which extends to "all cases in equity arising under the laws of the United States." Jurisdiction can be removed entirely from the Federal courts, as in the Norris-LaGuardia Act, but there is grave doubt whether it can be circumscribed to the extent that Congress can *require* the issuance of an injunctive order when it is the judgment of the court that it should not issue and that it would serve no useful purpose. But whether the issue be phrased in constitutional terms is unimportant. What is important is that the decision below works a far-reaching revolution in our judicial structure. We believe, with the dissenting judge below, that far more than appears is necessary to justify a belief that Congress had so lost faith in the judgment of the American judiciary.

2. The instant decision is the first in a court of appeals involving the construction of Section 205(a). Hence there is no conflict of authority in the Circuit Courts of Appeals in cases involving that Section. We submit, however, that the decision is in conflict with the principles established by many decisions under other regulatory statutes in which the Circuit Courts

of Appeals have held that the purpose of an injunction is to deter, rather than to punish—a principle diametrically opposed to the view of the majority below. For example, the decision below is directly contrary to the statement by the Circuit Court of Appeals for the Seventh Circuit in *Walling* v. *T. Buettner & Co.*, 133 F. (2d) 306, 308 (1943):

> "A court of equity will not afford an injunction to prevent in the future that which in good faith has been discontinued before the suit for injunction was brought, and where there is no evidence that the offense is likely to be repeated in the future. * * * Employers who are acting in good faith and endeavoring to comply with the law should not be harassed by the processes of a court of equity coercing them to do what they are willing to do and are trying to do voluntarily."

See also the cases cited pp. 21-22, *supra*. There is no decision under any other statute, so far as we know, that is in accord with the present decision of the majority of the Court of Appeals.

Moreover, as already indicated, the fact that the Emergency Price Control Act of 1942 applies to practically all business activity in this country, and that Section 205(a) provides one of the major enforcement provisions for every part of the Act and of all the regulations under it, make it apparent that many cases such as this will arise. Under the circumstances, a decision by this Court now will avoid the necessity of much litigation which might occur before a conflict developed. There are already many decisions in the District Courts. Eight of them have held in accord with the District Judge in the present case, that the federal equity courts have discretion to apply equitable principles in spite of the fact that violations have been

shown or have been admitted, and are thus in direct conflict with the decision of the majority of the Court of Appeals. *Brown, Administrator v. Southwest Hotels, Inc.*, (D. Ark.) (unreported); *Price Administrator* v. *Manneback*, (N. D. Ill.) (unreported); *Henderson* v. *Sonken-Galamba Corp.*, 1 Price Control Cases, par. 50,901 (W. D. Mo. 1942); *Brown* v. *Quinlan, Inc.*, (N. D. Ill.) (unreported); *Brown* v. *Russell Packing Co.*, (N. D. Ill.) (unreported); *Brown* v. *El Paso Iron & Metal Co.*, (W. D. Texas) (unreported); *Brown* v. *Houston Hide & Fur Co.*, (S. D. Texas) (unreported); *Brown* v. *May Hardwood Co.*, (W. D. Ky.) (unreported). One more has a dictum to the same effect. *Henderson* v. *J. B. Beaird Corp.*, 1 Price Control Cases, par. 50,931 (W. D. La. 1943). One has a dictum in accord with the majority of the Court of Appeals, but the case is wholly different on the facts, since the court specifically found that the defendants there were determined not to comply unless forced to do so. *Henderson* v. *Baldwin*, 1 Price Control Cases, par. 51,711 (W. D. Pa. 1942). Only one district court decision thus far appears on the facts to be in accord with the Court of Appeals in the present case, but the decision, which was on a motion for summary judgment, does not give enough information to show what the equities were. *Brown, Administrator* v. *Society Brand Hat Co.*, 1 Price Control Cases, par. 50,965 (E. D. Mo. June 17, 1943). The Office of Price Administration, which has supplied us with the references to many of these decisions, indicates that appeals are now pending in at least three Circuit Courts of Appeals, and possibly in a fourth. Certainly there is every reason why this Court should proceed at once to settle the issue which is common to all of these cases.

CONCLUSION

Wherefore, it is respectfully submitted that this petition for a writ of certiorari to the United States Court of Appeals of the District of Columbia be granted.

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August, 1943.

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Supreme Court of the United States

OCTOBER TERM, 1943

No. 316

THE HECHT COMPANY, *Petitioner,*

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

OPINIONS BELOW

The findings of fact, conclusions of law, and memorandum opinion of the District Court (R. 441-454) are reported in 49 F. Supp. 528. The opinions of the Court of Appeals for the District of Columbia (R. 593-610) are reported in 137 F. (2d) 689.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered July 22, 1943 (R. 610-611). The petition for a writ of certiorari was filed on September 2, 1943, and the writ was granted on Octo-

ber 18, 1943. The jurisdiction of this Court rests upon Section 240(a) of the Judicial Code, as amended by the Act of February 23, 1925.

QUESTION PRESENTED

Whether, despite findings, *inter alia*, that "the defendant and its employees have attempted in good faith to comply with the [Emergency Price Control] Act, and have taken vigorous steps to do so"; that "the compliance thus resulting has been very substantial"; that "there were no wilful violations"; that "mistakes have been corrected as soon as discovered, and vigorous steps have been taken against their happening again"; that "these acts have all been done voluntarily and at considerable expense, in a spirit of full cooperation with the Office of Price Administration and with its aims and policies"; that "the defendant has improved its system of control so that the indication is that there will be no further violations except such as may be caused by human frailties"; that "no one has suggested to the defendant how its present method of compliance can be made better"; and that "an injunction would have no effect by way of insuring better compliance in the future", "would be unjust to the defendant", and "would not be in the public interest", nevertheless Section 205(a) of the Act requires that upon a finding of a violation of the Act or a regulation issued thereunder the court is deprived of all discretion and must issue an injunction as a matter of course without regard to any equitable considerations.

STATUTE AND REGULATIONS INVOLVED

The relevant portions of the Emergency Price Control Act of 1942 (Act of January 30, 1942, c. 26, 56 Stat. 23, 50 U. S. C. A. App. Sec. 901) and the General

Maximum Price Regulation (7 Fed. Reg. 3153, April 30, 1942), are set out in the Appendix.

STATEMENT

This is a proceeding by which the Price Administration seeks an injunction against The Hecht Company, a Washington, D. C., department store, to restrain it from violating the General Maximum Price Regulation (7 Fed. Reg. 3153) promulgated under the Emergency Price Control Act of 1942 (56 Stat. 23). Upon the filing of the complaint on December 8, 1942 (R. 1) a temporary restraining order was entered *ex parte* (R. 6-7). By agreement the case was then advanced and tried on the merits (R. 9-10). After the trial, the District Court dismissed the complaint and dissolved the temporary restraining order (R. 455). Its findings of fact and conclusions of law (R. 447-454) present a rather complete picture of the case as found by the court after a trial of several weeks, and are therefore set out in full, as follows.[1]

1. Leon Henderson, the original plaintiff, was the Price Administrator. During the progress of the trial he resigned, and Prentiss M. Brown, his successor in that office, was substituted as plaintiff.

2. Defendant corporation operates a large department store in Washington, D. C. The store enjoys an excellent reputation, and its business has grown from a volume of about $500,000 in 1894 to about $20,000,000 in 1942 (R. 427).

3. The Emergency Price Control Act was approved January 30, 1942, and, prior to the promulgation of the

[1] The Record references are included to some of the supporting testimony.

General Maximum Price Regulation, the application of which is involved in these proceedings. The Hecht Company had already taken steps to prepare itself for compliance with whatever price control regulations might be issued (R. 76, 122-123). One of its executives had gone to Canada to study and report on the Canadian system of price control (R. 428). The Hecht Company had created a new section known as the Price Control Office with office space set aside within the store which was to be devoted entirely to price control (R. 122-123). This was headed by Mr. Robert Levi, a well educated and well trained employee who had a wide knowledge of the operation of the store (R. 75-76, 427-428). Mr. Levi was told to employ such persons as were necessary and was given an unlimited budget (R. 80, 429, 433-434). He organized his section and assumed the direction of compliance with certain price regulations relating to nylon hose, household mechanical refrigerators, and household vacuum cleaners which had been put in effect prior to the promulgation of the General Maximum Price Control Regulation (R. 76).

4. Prior to the promulgation of the General Maximum Price Control Regulation, The Hecht Company had also made evident its desire to cooperate with the Office of Price Administration (R. 78, 135, 430). Its store was made available to members of the staff of the Office of Price Administration on numerous occasions, and Mr. Dulcan, the general manager, proffered the store and its personnel as a testing or proving ground or laboratory, in which the Office of Price Administration might check or experiment with any regulation which might be issued (R. 134-135, 429-430). The Hecht Company staff prepared drawings which were used as illustrations in a bulletin later issued by the Office of Price Administration (R. 420-422).

5. General Maximum Price Regulation, promulgated by the Price Administrator, was dated April 28, 1942, was published in the Federal Register April 30, 1942, and was to become effective as to manufacturers on May 11, and as to retailers on May 18, 1942. It provided that a seller's maximum price for any commodity should be, in those cases in which the seller dealt in the same or similar commodities during March 1942, the highest price charged by the seller during March 1942 for the same commodity, or if no charge was made for the same commodity, for the similar commodity most nearly like it, and in those cases in which the seller did not deal in the same or similar commodities during March 1942 the highest price charged during that month by the most closely competitive seller of the same class for the same commodity, or if no charge was made for the same commodity for the similar commodity most nearly like it. It was provided that for the purpose of the regulation the highest price charged by a seller during March 1942 should be the highest price which the seller charged for a commodity delivered by him during March 1942, or if the seller made no such delivery during March 1942, his highest offering price for delivery during that month. It was provided that in cases where the same or similar commodities had not been sold by the seller or by his competitors the seller's maximum price should be determined by the seller selecting from the same general classification and price range as the commodity being priced the comparable commodity for which the seller could establish a price and of which the seller delivered the largest number of units during March 1942, that the seller should divide his maximum price for that commodity by his replacement cost of that commodity, and should multiply the percentage so obtained by the cost to him of

the commodity being priced, and that the resulting figure should be the maximum price of the commodity being priced. The regulation also provided that a seller should preserve existing records relating to prices for commodities delivered during March 1942, and offering prices during that month; that he should prepare prior to July 1, 1942, and thereafter keep for examination, a statement showing the highest prices charged for commodities delivered during March 1942 and offering prices for delivery during that month together with an appropriate description or identification of each such commodity; and that he should keep records relating to the prices charged for commodities sold after the effective date of the regulations and records showing the basis on which he determined maximum prices for those commodities. The regulation also provided that in the case of certain commodities designated as cost-of-living commodities and listed in an appendix to the regulation every seller should on and after May 18, 1942, mark the maximum price of such commodity on the commodity or post such price in the store, and that lists of such commodities with the maximum selling price and with appropriate descriptions should be filed in the Office of Price Administration on or before June 1, 1942,[2] and thereafter kept up to date by monthly supplements (7 Fed. Reg. 3153).

6. Mr. Levi secured an advance copy of General Maximum Price Regulation, several days before it was formally published, and immediately mapped out and put in effect a series of moves to bring The Hecht Company into compliance (R. 80-82). This work had to be done rapidly because of the limited period of time

[2] By a bulletin issued May 22, 1942, this date was extended to July 1, 1942 (R. 95, 107).

after April 28, 1942, the date of the promulgation of the General Maximum Price Regulation and before May 18, 1942, the date on which the maximum prices were to become effective and the posting made (R. 95, 98), and before June 1, 1942, when the list of cost-of-living commodities was to be filed (R. 95, 106-107). The Washington store of The Hecht Company contained 107 selling departments, each of which was in effect a small store (R. 433). The head of each department was called a "buyer", some of whom had charge of more than one department (R. 77-78, 432-433). It was the duty of the buyer to order the goods for his department, to price them, to sell them, and generally to manage the department (R. 77-78, 432-433). The primary responsibility for compliance with the various aspects of the regulations was placed on the buyers in the various departments (R. 18-19, 98-99, 124, 145, 432). This was the only course that could have been followed, since only the buyers were sufficiently well acquainted with the stock and the operation of their departments to be able to determine what deliveries had been made in March 1942, and at what prices, and to compare the articles on hand with the articles delivered in March (R. 98-99, 145-146). To insure that the buyers accepted and fulfilled the responsibility thus imposed upon them, Mr. Levi interpreted the regulations and applied them to the particular problems of the store, prepared and distributed memoranda and forms (R. 18-19, 82, 85-91, 96-101, 103-105, 107-111, 113-114, 136-137, 139, 150-154), conducted frequent meetings of the buyers (R. 78-79, 81, 92-94, 103, 135, 144-146, 155-156, 430), answered questions (R. 93, 96-97), and in general made the buyers aware of what had to be done to comply with the regulations and kept track of their performance (R. 116-117). Mr. Levi devoted all of his time to this work

and he had seven assistants who devoted all of their time to it (R. 97). He kept closely in touch with developments at the Office of Price Administration (R. 168, 149-150, 154-155), and subscribed to a number of services which kept him informed of new regulations and interpretations (R. 79). About June 20, 1942, Mr. Levi resigned to become an Ensign in the United States Coast Guard (R. 75, 122), and his place was taken by Mr. Etelson (R. 17, 19), who had been with the store for many years (R. 133, 433) and was well qualified to carry on the work (R. 132-134, 433). Mr. Etelson had been prepared for the post by Mr. Levi for about a month before Mr. Levi left the store (R. 135-136). From the time he replaced Mr. Levi, Mr. Etelson continued the program of educating and supervising the staff of The Hecht Company in order to insure compliance with the regulations of the Office of Price Administration (R. 136-137, 144-157).

7. Notwithstanding the work of Mr. Levi and Mr. Etelson the buyers made mistakes (R. 158, 160). The Washington store of The Hecht Company has approximately two thousand employees (R. 425). Its inventory of January 30, 1942, showed in excess of one million two hundred thousand items of merchandise (R. 401); it had between January 1, 1942, and November 1, 1942, some fifty-four thousand and thirty transactions in the furniture departments alone (R. 336). A transaction includes any number of items bought by a customer at the time of the transaction. The application of the regulations to the pricing of a particular article often involved interpretation of the regulations as well as exact knowledge of the nature of the article, whether the same or similar articles had been delivered in March 1942, etc. (R. 106-107, 110-113, 131-132, 134-135). The buyers were merchants who were not trained

in such interpretation (R. 77, 124, 432). The correct pricing of the articles was made difficult by the novelty of the regulations (R. 78, 134-135), by the large volume of articles (R. 401), by the fact that the comparisons were with deliveries two months before as to which it was often hard to find adequate records (R. 249-251). The buyers were further confused, and the work of Mr. Levi and Mr. Etelson and the Price Control Office of the store was made much more difficult, by the fact that there were numerous other regulations of the Office of Price Administration (R. 99-103, 108, 116, 125-126, 136, 148-152, 192-193), many of which in whole or in part were applicable to the store (R. 100), and which were all different from General Maximum Price Regulation (R. 100-101, 108-110), and many of which differed from each other in their method of determining prices (R. 103, 136-140, 150-152), including regulations relating to summer seasonal commodities, women's, girls' and children's outwear garments, men's and boys' tailored clothing, women's fur garments, fall and winter seasonal commodities, bed springs, waterproof rubber footwear, stirrup pumps, phonograph records, paper products, corded yarn garments, and women's silk hosiery (R. 99-100, 114-116), and in addition were numerous amendments issued from time to time by the Office of Price Administration of not only the General Maximum Price Regulation but also of the other maximum Price Regulations (R. 139-142). Mistakes in pricing were caused by difficulties and delays in determining what articles had been delivered in March and at what prices (R. 196-197, 236-237, 243-246, 287-289), occasionally errors would be made because of human mistakes in listing, typing or copying (R. 143, 175-178, 203, 234, 240-241, 249, 252, 256, 259, 294-295), and in some instances the buyers permitted articles to be sold

before the proper price had been established for them (R. 287-289). In a few instances buyers erroneously believed the prices could be equalized so that items of the same value would not be sold at different prices (R. 162, 178, 186-187, 216-219). Mistakes were made in listing owing to the fact that some of the buyers misinterpreted the requirement for listing all items sold or delivered for sale in March, and listed only a representative selection of goods showing each price range, style and cost, but not each source or style number, and the same misunderstanding caused the omission of items newly received which were similar to items already listed (R. 158-159, 181, 215). In one department a buyer, whose listing was otherwise quite complete, erroneously believed that slippers, play shoes, and rubbers were not cost-of-living commodities and that they did not have to be listed (R. 203, 205, 209). These mistakes in pricing and listing were all made in good faith and without intent to violate the regulations (R. 141-142, 190-191). The performance of the store as to posting was excellent (R. 117-121, 224-228, 404-420).

8. In the latter part of September 1942, the Office of Price Administration commenced an investigation which continued for approximately six weeks and in which ten people took part from time to time (R. 17, 20, 74-75). The Hecht Company gave the investigators every possible help, and made available for assistance to the investigators its own personnel, including Mr. Etelson, the Price Control Administrator of the store, and the buyers in the departments which were under investigation (R. 18, 137, 181, 434, 437-438). The services of such people were quite largely utilized by the investigators. The investigation disclosed that buyers had made the mistakes set forth in the preceding paragraph. The complexity of the subject caused the in-

vestigators sent by the Office of Price Administration also to make numerous mistakes in their report (R. 157, 160, 173-174, 176, 178-179, 207, 250, 290, 301-303).

9. The mistakes brought to light by the investigation were at once corrected (R. 142-144, 182-183, 187, 190, 203, 214-215), and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future (R. 282 ff., 377-378, 437). Mr. Etelson's staff was increased several times (R. 143, 156, 286, 434), until it reached the number of twenty-eight employees who were engaged under his direction in seeing that the store complied with the regulations as to price control (R. 156-157, 286, 424-425). New methods of control were instituted so that by early November 1942 the system was as follows (R. 230-235, 282 ff.): Copies of all orders for articles go to the store's price control office. If it is a re-order of an article already registered at the price control office the buyer must put on the copy in green ink the page and line number at which the article is registered in the ceiling price book. If the order is for a new article the order must have attached to it a form supplied by the store which indicates the basis of the comparison in accordance with the procedure outlined in paragraph 5, *supra*, or the method of establishing the ceiling price for the new item if it is covered by a regulation other than the General Maximum Price Regulation. The price control office checks the form to see that it is properly filled out, that the article upon which the comparison is based is listed, and at the price as indicated on the form, and that the comparison appears to be a proper one. Where goods are ordered to be sold in the future and the price cannot be established at once the form is left blank, and a statement is attached that the goods must not be brought from the warehouse to the

store until the buyer has been notified and a ceiling price established. After a copy of the order has gone through the price control office it goes to the invoice office to be held until the merchandise arrives. It is then matched against the merchandise, and the invoice office puts on the invoice in red ink the retail price and in green ink the ceiling price and then sends the form back to the price control office, thus showing that the goods have arrived and have been priced. The invoice then goes to the markers, who make up the price tickets and put on them the retail and ceiling prices. The price tickets are then affixed to the items. No article can go on the floor of the store until all this has been done. Moreover, although the regulations provide that the ceiling price need be stated only on cost-of-living commodities the store is now putting the ceiling price on every article that comes in. The payroll of the price control office for the week ending December 19, 1942; had reached the sum of $853.00 for employees who devoted all their time to that work. Taking the proportion of the time of other employees which was devoted to this work the additional sum of $1,267.50 was expended at that time weekly by The Hecht Company in complying with the regulations (D. Ex. 78; R. 424 et seq.).

10. It has always been the policy of The Hecht Company to give a customer credit for any overcharge which may have been discovered by the store, and The Hecht Company is making repayment of all overcharges brought to light by the investigation in case of customers who can be identified. The Company proposes to contribute to some local charity the amount of any such overcharges which cannot thus be allocated (R. 437).

11. December 8, 1942, Leon Henderson who was then the Price Administrator instituted this suit, asking that

this defendant be enjoined from violating the General Maximum Price Regulation or any regulation adopted pursuant to the provisions of the statute establishing maximum prices or requiring the making or keeping of records or the making of reports. The defendant received no warning before the institution of the suit (R. 122-123, 437). There has never been any refusal by the store or any of its employees to comply with any orders or requests of the Office of Price Administration (R. 122-123, 434 et seq.).

12. The defendant and its employees have attempted, in good faith, to comply with the act, and have taken vigorous steps to do so (R. 155-157). The compliance thus resulting has been very substantial (R. 157). Violations have occurred, but they have not been numerous in view of the difficulties involved in the defendant's efforts to comply. There were no wilful violations. Mistakes have been corrected as soon as discovered (R. 142-144), and vigorous steps have been taken to insure against their happening again (R. 153-154, 230-235), and to combat the difficulties which arise from human frailty. These acts have all been done voluntarily and at considerable expense (R. 422 et seq.), in a spirit of full cooperation with the Office of Price Administration and with its aims and policies (R. 117, 144, 431-434). The defendant's system of control has been greatly improved (R. 230-235, 282 ff.), and no one has suggested to the defendant how its present method of compliance can be made better (R. 122-123, 234). An injunction would have no effect by way of insuring better compliance in the future, and would be unjust to the defendant. An injunction would not be in public interest.

Based on the foregoing findings, the court entered conclusions as follows (R. 454):

1. Section 205(a) of the Emergency Price Control Act of 1942 does not require this Court automatically to issue an injunction in any case where violations of the statute are shown or admitted.

2. The purpose of an injunction is to deter rather than to punish, and an injunction should not issue unless thereby better compliance with the law may be enforced. Each case must be measured and decided according to its own circumstances, and the Court may exercise its discretion in accordance with the equities of the case.

3. The complexity of the regulations and the difficulty of compliance are not in themselves defenses in this case, but may be considered in connection with other evidence bearing on the extent of the defendant's efforts to comply.

4. Where the defendant has made a determined effort to comply with the regulations issued under the Emergency Price Control Act of 1942, and where violations were the result of errors on the part of employees of the defendant made in good faith, and where the attitude of the defendant is not antagonistic, but is cooperative, and where the defendant has improved its system of control so that the indication is that there will be no further violations except such as may be caused by human frailties, an injunction would be unjust to the defendant and would not be in the public interest and this court should decline to issue an injunction.

On appeal by the Price Administrator, the Court of Appeals for the District of Columbia, by a divided Court, reversed the decision of the District Court (R. 610-611). The Court felt compelled to reverse on the

theory that under Section 205(a) "an injunction or other order is to be granted as of course when violations of the Act are found" (R. 598).

On August 11, 1943, the Court below stayed its mandate pending a determination by this Court, provided that the petition for certiorari should be filed by September 2, 1943. This was done, and the mandate has not issued.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals for the District of Columbia erred:

(1) In holding that Section 205(a) of the Act removed all discretion from the District Court and made it mandatory that an injunction be granted when a violation of the Act is found.

(2) In holding that the District Court was required to issue an injunction against petitioner upon the facts found in this case.

(3) In reversing the judgment and order of the District Court.

SUMMARY OF ARGUMENT

Section 205(a) of the Emergency Price Control Act does not force a federal equity court to issue an injunction whenever it finds a violation of the Act or the regulations issued under it. On the contrary, under that section, courts of equity remain courts of equity, with discretion to act in each case as the equities require, and injunctions remain injunctions, and are not issued as penalties.

Heretofore it has been axiomatic that injunctions were issued to deter, not to punish. Neither the language nor the legislative history of Section 205(a) war-

rants the conclusion of the majority below that Congress has jettisoned all prior doctrine by its enactment. So far as language is concerned, the statute expressly contemplates such "other order"—apart from a permanent or temporary injunctive or a restraining order—as the equities of the case may require. Moreover, the use of the words "shall issue", upon which the Administrator strongly relies, do not warrant his conclusion; where the legislative direction is addressed to a court or judge, the word "shall" does not ordinarily have a mandatory connotation.

Our interpretation is fully borne out by the legislative history of Section 205(a). The Senate Committee, in reporting it, stated that it was "in common with substantially all regulatory statutes", and unquestionably substantially all such statutes recognize that the courts will act in each case as the equities require. Other statutes which use the word "shall", and upon which the Administrator relies, also indicate a consistent construction in accord with the view which we urge. The decisions under Section 205(a) itself are almost uniformly in accord with our position.

The Administrator's argument that public policy supports his construction because it aids in enforcement of the Act is demonstrably unsound: Congress has provided an arsenal of sanctions which the Administrator may apply whenever sanctions are necessary. Congress has not, however, indicated any intention to apply sanctions when they are unnecessary, as in the present case. Nor has Congress indicated that it intended to raise the serious questions of law and policy which are involved in a construction of Section 205(a) which coerces judicial action and destroys, *pro tanto*, the independence of the judicial branch.

ARGUMENT

The issue in this case is the proper interpretation of one of the sections of the enforcement provisions of the Emergency Price Control Act of 1942 (56 Stat. 23). Section 205 of that Act provides three types of actions by which the aid of the courts may be enlisted in enforcing its requirements. First, under Section 205(e), a buyer of goods sold in violation of the Act may bring an action at law for $50, or for treble damages, whichever is greater, plus attorney's fees. Second, under Section 205(a) the Administrator may apply for an injunction to restrain violations. Finally, under Section 205(b), the Government may bring criminal proceedings against wilful violators.[3]

The enforcement provisions of Section 205 thus cover both extremes of enforcement machinery and also a middle ground. A judgment at law for civil damages may be obtained by simply showing that a sale in violation of the statute or regulation has occurred.[4] At the other extreme, a criminal conviction may be obtained only where a *wilful* violation of the statute or regulation is shown. It is our position that the statutory proceeding for an injunction under Section 205(a), which must be brought in a court of equity, occupies a middle ground, where the court is left with discretion to consider the equities of the particular case and to enter the decree that seems proper in all the circumstances.

Section 205(a), which deals with injunction suits such as the one at bar, provides as follows:

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[3] Section 205 also provides, in paragraph (f), for an administrative enforcement machinery through the medium of licenses.

[4] *Bowles* v. *American Stores Inc.* (App. D. C.), decided December 13, 1943.

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such a person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Counsel for the Administrator, and the majority of the court below, give this section an extreme construction. As they read the section, a District Court is *forced* to issue an injunction whenever it finds any violation, either of the statute or of any of the multifarious regulations issued under it. They construe the section not as an injunctive measure, but as a punitive one. As they read it, no regard need be had to the probability or lack of probability of *future* harm to the public interest; regard need be had only to the *past*—has there been any violation at any time of the statute or any of the regulations. The language of the majority opinion makes this clear (R. 598):

> The phrase "a permanent or temporary injunction, restraining order, or other order shall be granted", in its context, means in our opinion that an injunction or other order is to be granted as of course when violations of the Act are found.

Manifestly, federal equity courts by that interpretation are shorn of every vestige of discretion or equitable power under this Act. Their function becomes no more and no less than that of criminal courts: to

determine whether a violation has occurred—except that the accused has no right of trial by jury. By that interpretation, the injunctions which the courts are to issue lose their character as preventive measures and become simply penalties.

We believe, on the contrary, that Congress contemplated no such result. When Section 205(a) is read in the light of its legislative history it is apparent that Congress had no intention of coercing action by federal equity courts, nor of perverting injunctions into a form of punishment. In our view, in the view of the District Court, and in the view of the dissenting justice below, the courts of equity remain courts of equity, with discretion to act in each case as the equities require; injunctions, by the same token, remain injunctions, and are issued not as penalties, but to insure better compliance with the law in the future.

Heretofore (at least until the decision of the court below) it has been an axiom of equity, in both federal and state courts, and in both public and private litigation, that injunctions were framed and issued in terms of the court's judgment of the necessities of the *future*. No one, heretofore, would have taken issue with the statement of the court, in passing upon a cognate question under the Fair Labor Standards Act,[5] in *Fleming v. Phipps*, 35 F. Supp. 627 (Md. 1940): "It would seem to be elementary that the purpose of an injunction is to deter rather than to punish." A similar situation prompted an equally vigorous comment in *Walling v. Shenandoah-Dives Mining Co.*, 134 F. (2d) 395, 397 (C. C. A. 10th, 1943):

> An injunction may not be employed to punish past violations or to simply establish that viola-

[5] Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. Sec. 217.

> tions had occurred. Its function is to stop existing violations or prevent further infractions if there is any reason to believe that they may occur.

Again, the Seventh Circuit has stated in *Walling* v. *T. Buettner & Co.*, 133 F. (2d) 306 (1943), *certiorari denied*, 319 U. S. 771:

> A court of equity will not afford an injunction to prevent in the future that which in good faith has been discontinued before the suit for injunction was brought, and where there is no evidence that the offense is likely to be repeated in the future. * * * Employers who are acting in good faith and endeavoring to comply with the law should not be harassed by the processes of a court of equity coercing them to do what they are willing to do and are trying to do voluntarily.

There are many decisions to the same effect in both the federal and state courts. See, *e.g.*, *Swift & Co.* v. *United States*, 276 U. S. 311, 326 (1928); *Shore* v. *United States*, 282 Fed. 857, 859 (C. C. A. 7th, 1922); *Blease* v. *Safety Transit Co.*, 50 F. (2d) 852, 856 (C. C. A. 4th, 1931); *American Mercury, Inc.* v. *Chase*, 13 F. (2d) 224, 225 (Mass. 1926); *Fleming* v. *National Bank of Commerce*, 41 F. Supp. 833 (S. D. W. Va. 1941); *Walling* v. *Builders' Veneer and Woodwork Co.*, 45 F. Supp. 808 (E. D. Wis. 1942); *Nann* v. *Raimist*, 255 N. Y. 307, 174 N. E. 690, 694 (1931); *Exchange Bakery & Restaurant, Inc.* v. *Rifkin*, 245 N. Y. 260, 157 N. E. 130 (1927); *Longshore Printing & Pub. Co.* v. *Howell*, 26 Ore. 527, 38 Pac. 547 (1894); *Parkinson Co.* v. *Building Trades Council*, 154 Cal. 581, 98 Pac. 1027 (1908); Joyce, *Injunctions* (1909) Sec. 41.

Counsel for the Administrator contend, and the court below has held, that by Section 205(a) of the Emergency Price Control Act, *supra*, all of the prior doc-

trine of *preventing* by injunction is jettisoned, and a radically different course of *punishing* by injunctions is substituted. On any principle of statutory construction, only the most clearcut and explicit language can compel that result. We believe that, upon examination, it will be apparent that Congress neither intended nor compelled any such result. We believe Congress plainly intended that the equity court might, as it did here, refuse an injunction when it found that (R. 447-454):

> the defendant and its employees have attempted, in good faith, to comply with the act, and have taken vigorous steps to do so;
>
> there were no wilful violations;
>
> mistakes have been corrected as soon as discovered, and vigorous steps have been taken to insure against their happening again, and to combat the difficulties which arise from human frailty;
>
> these acts have all been done voluntarily and at considerable expense, in a spirit of full cooperation with the Office of Price Administration and with its aims and policies;
>
> no one has suggested to the defendant how its present method of compliance can be made better;
>
> *an injunction would have no effect by way of insuring better compliance in the future and would be unjust to the defendant; and*
>
> *an injunction would not be in the public interest.*

The holding of the majority below to the contrary is based, as its statement quoted at page 18 above indicates, on the words "shall be granted", in that clause of Section 205(a) which states that "upon a showing by the Administrator that such person has engaged or is about to engage in any such [illegal] acts or practices a permanent or temporary injunction, restraining

order or other order *shall be granted* without bond." The combination of the disjunctive use of "has engaged", and the phrase "shall be granted" requires, in the opinion of the majority below, that upon proof of *one* violation, no matter how far removed in time, how trivial in nature, or how innocent its cause, the court *must* issue an injunction. Stated realistically, rather than legally, the court below has held that *every* seller of goods in the United States *must* be enjoined by the courts if the Administrator chooses to demand it—for certainly every seller in the country would admit that at some time he has, probably unintentionally, violated some provision of the manifold and complex OPA regulations. The Administrator will be the last person to deny that this is the inevitable consequence.

Obviously, nothing but the clearest and most unambiguous language can warrant the conclusion that Congress intended to take this novel and far-reaching step. When the statute and the legislative history are examined, we think it quite clear that no such construction of the Emergency Price Control Act such as that given it by the majority below was intended by Congress, and certainly no such construction is so necessary that Congress can be said to have compelled it by inadvertence.

At the outset, however, we should clear away two irrelevant matters which are *not* involved here, but which are discussed at some length in the briefs for the Administrator both in the lower court and in the Memorandum on certiorari in this Court. We agree, first, that an injunction under regulatory statutes may be an appropriate remedy in certain cases where it would be inappropriate in private litigation. Congress may make it unnecessary, for example, to allege that there is

an absence of an adequate remedy at law. *Cf. Securities and Exchange Commission* v. *Jones*, 85 F. (2d) 17 (C. C. A. 2d, 1936), *certiorari denied*, 299 U. S. 581; *Henderson* v. *Burd*, 133 F. (2d) 515 (C. C. A. 2d, 1943). Congress may make it unnecessary in public litigation, to show irreparable injury. *American Fruit Growers* v. *United States*, 105 F. (2d) 722 (C. C. A. 9th, 1939); *United States* v. *Adler's Creamery*, 110 F. (2d) 482 (C. C. A. 2d, 1940), *certiorari denied*, 311 U. S. 657.

We also agree, of course, that the mere cessation of illegal acts, whether the cessation was before or after suit is not *per se* a defense, and we do not urge it as such. *Cf. Federal Trade Commission* v. *Goodyear Tire & Rubber Co.*, 304 U. S. 257 (1938). The other cases cited to the same effect in the Memorandum for the Administrator (pp. 12-13) can safely be put to one side. We do *not* concede, of course, that this fact is *wholly immaterial*, nor do any of the cases cited go so far. In all such cases, as in every case in which an injunction is sought, the cessation of the wrongful acts is one factor, but only one factor, to be taken into account by the court in determining *the likelihood of future wrongful conduct*. That is precisely what the District Court has done in the case at bar.

We turn, then, to the real issue in the case: *Must* an injunction issue despite the facts found by the District Court? In the language of the majority opinion below (R. 598):

> The question remains whether the Act merely *authorized* the Court to grant an order without regard to equitable considerations, such as the Company's good intentions and the probable effect of granting an order, or whether it *required* the Court to do so.

Our answer to that question is well stated in the dissenting opinion below (R. 608):

> More than appears, I think, is necessary to justify the assumption that Congress intended to coerce judicial action and to destroy judicial discretion and hence to require an injunction to issue, even where the court finds, as it did here, that the facts are such that to do so would accomplish no other result than is already accomplished by the voluntary action of the defendant.

THE LANGUAGE OF THE STATUTE PERMITS DISCRETION

In the first place, Section 205(a) is not so categorical in its language as the Administrator, and the majority below, would imply. Several kinds of orders may be entered—"a permanent or temporary injunction, restraining order *or other order* shall be granted without bond." Taken in conjunction with the legislative history of the sections which we set out below, the inclusion of the word "or other order" was presumably to leave the courts free to enter such order, other than a temporary or permanent injunction or a restraining order, as the equities of the case might require, either by granting an injunction as to some of the acts complained of, or as to some of the defendants, or by dismissing the injunction case entirely, as was done in this case. The dissenting judge below suggests a further possibility—an order in the case "retaining it on the docket, with the right to the Administrator, on reasonable notice and a showing that violations of the Act had been resumed, to again apply to the court for injunctive relief" (R. 610).

The majority opinion below dismisses this phrase with the comment that it "evidently" means that the court may "choose between an injunction against vio-

lations of the act and an affirmative order requiring compliance" (R. 602). This is pure hypothesis. Although it is a possible construction of the phrase, it seems obvious that if Congress had intended to tie the hands of the equity courts, and, contrary to all precedent, deprive them of every vestige of discretion, it would have used language which could not have left any possible doubt as to its intention. At least, it would not have used language which can be explained away only on the basis that "evidently" it means something less than what it says.

Nor is the use of the word "shall" in the phrase "shall be granted" the categorical command which it must be if the position of the Administrator is to be sustained. "Shall", when used in a statute, ordinarily carries a mandatory connotation, it is true, but it is not necessarily the equivalent of "must", in every case. In cases such as the present one, as the dissenting judge accurately points out, where the legislative direction is addressed to a court or to a judge, the rule is just as clearly recognized that the word "shall" does *not* have a mandatory connotation, but rather is the equivalent of "may". *Becker* v. *Lebanon & M. Ry. Co.*, 188 Pa. 484, 41 Atl. 612 (1898); *In re Rutledge*, 162 N. Y. 31, 56 N. E. 511 (1900); *Clancy* v. *McElroy*, 30 Wash. 567, 70 Pac. 1095 (1902); Sutherland, *Statutory Construction* (3d ed. 1943) Sec. 5810; Crawford, *Statutory Construction* (1940) Sec. 267. The same result has been reached even where the legislative direction was in terms of "must", rather than "shall". *State* v. *District Court*, 106 Mont. 272, 76 P. (2d) 634 (1938).

The rule is peculiarly applicable to legislative directions addressed to courts of equity, or to proceedings in their nature equitable, as in the instant case. *Becker* v. *Lebanon & M. Ry. Co.*, *supra*, is an example. There a statute provided:

> "It shall be the duty of the court * * * to examine, inquire and ascertain whether such corporation does in fact possess the right or franchise to do the act from which such alleged injury to private rights, or to the rights and franchises of other corporations, results; and if such rights or franchises have not been conferred upon such corporations such courts, if exercising equitable power, *shall* by injunction, at suit of the private parties or other corporations, restrain such injurious acts." (Italics ours.)

The railroad, in excess of its rights and franchises, constructed a track in front of the plaintiff's land, and the plaintiff brought suit for an injunction under the statute. The equities were all in favor of the railroad, as the act had been unintentional and the plaintiff could have been adequately compensated at law and had been guilty of laches. The plaintiff argued, however, that under the apparently mandatory language of the statute "an injunction is no longer of grace but of right, where a corporation is acting in excess of its franchise, to the injury of a complainant."

The Court, however, affirmed an order dismissing the complaint, saying (41 Atl. at pp. 612, 613):

> "Appellant plants himself firmly on his legal right, and, if he were in a court of law, his position would be incontestable. But he has come into a court of equity, asking its aid by injunction, which is of grace, and not of right."
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> * * * * * * * * *
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> "It [the statute] was not intended to do away with or change the general principles on which equitable relief is administered. Notwithstanding, therefore, the use of the imperative, 'shall', the injunction is not to be granted, unless a proper case for injunction be made out, in accordance with the principles and practice of equity. The

word 'shall', when used by the legislature to a court, is usually a grant of authority, and means 'may'; and, even if it be intended to be mandatory, it must be subject to the necessary limitation that a proper case has been made out for the exercise of the power."

The cases to the same effect are legion. See, *e.g.*, *State ex rel. Nixon* v. *Grace*, 98 Ark. 505, 136 S. W. 670 (1911); *Appeal of Wentz*, 76 Conn. 405, 56 Atl. 625 (1904); *Beasley* v. *People*, 89 Ill. 571, 575 (1878); *Parkison* v. *Thompson*, 164 Ind. 609, 73 N. E. 109 (1905); *State* v. *Strait*, 94 Minn. 384, 102 N. W. 913 (1905); *Reed* v. *Wellman*, 110 Neb. 166, 193 N. W. 261 (1923); *Munro* v. *State*, 223 N. Y. 208, 119 N. E. 444 (1918); *In re Davies*, 168 N. Y. 89, 61 N. E. 118 (1901); *Jenkins* v. *Putnam*, 106 N. Y. 272, 12 N. E. 613 (1887); *People* v. *Nussbaum*, 32 Misc. 1, 66 N. Y. Supp. 129, 133 (1900); *Anderson's Appeal*, 215 Pa. 119, 122, 64 Atl. 443, 444 (1906); *Pittsburgh* v. *Coursin*, 74 Pa. 400 (1873); *In re Laub*, 21 A. (2d) 575 (Pa. Super. 1941); *Meade* v. *Meade*, 111 Va. 451 69 S. E. 330 (1910).

Certainly, therefore, the language of Section 205(a) is not the clear and convincing language which alone, we submit, would justify the drastic coercion of judicial action for which the Administrator contends. On either of the bases suggested, it is open to the interpretation for which we contend; indeed, read not as isolated words and phrases but in context, and in the light of well-settled principles of statutory construction, Section 205(a) fully supports the exercise of discretion by the District Court.

The Legislative History Indicates That Discretion Was Contemplated

But we need not dwell overlong on the language. Both the court below and the Administrator recognize that their position on the language of the section alone is in need of buttressing, and they turn to the legislative history for support. Upon examination, however, it will be seen that what legislative history there is indicates that the construction which we urge, and which was adopted by the District Court, is the one that Congress intended.

Counsel for the Administrator, and the majority below, purport to find support in the legislative history almost solely from an unexplained change by the Senate in the House bill. As passed by the House, Section 205(a) stated that "*upon a proper showing* a permanent or temporary injunction, restraining order or other order shall be granted without bond". In the Senate Committee the italicized words—"upon a proper showing"—were eliminated, and the present language was substituted—"upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary injunction, restraining order", etc. There is no indication whatever as to why the change was made. See Sen. Rep. No. 931, 77th Cong., 2d Sess.

The language of the House bill, as the Administrator has admitted, and as the courts have frequently held,[6] left the courts as courts of equity, free to deny an injunction when it would serve no useful purpose and

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[6] See, *e. g., Securities and Exchange Commission* v. *Lawson*, 24 F. Supp. 360 (Md. 1938); cf., *Walling* v. *T. Buettner & Co.*, 133 F. (2d) 306 (C. C. A. 7th, 1943) *certiorari denied*, 319 U. S. 771.

would be contrary to the public interest. Yet on this one change the Administrator seeks to spell out a drastic modification of the rules of equity, and the abolition of principles which have heretofore been axiomatic in injunction proceedings. Realistically, the change did no more than define the nature of the showing which the Administrator must make by repeating the prior language of the section. Yet on that alone, it is argued that Congress has executed a complete and drastic *volte face*.

Why the change was made we do not know, nor does counsel for the Administrator. It may well have been stylistic. Committee reports and debates alike are silent. We do know one thing, however, which is conclusive on this issue—*the Senate Committee did not intend to do, by the change, what the Administrator and the majority below say they did.* They did not intend to enact a drastic withdrawal of discretion from the courts. *They intended to enact the usual regulatory statute, no more and no less.*

The Report of the Senate Banking and Finance Committee, in reporting Section 205(a) *in the form in which it was enacted*, states (S. Rep. No. 931, 77th Cong., 2d Sess., p. 10):

> "(c) *Suits to enjoin violations—In common with substantially all regulatory statutes*, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. *Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case.*" (Italics ours.)

In the light of this statement of Congressional intent, speculation about the reasons why the words "upon a proper showing" were changed is pointless. We know, definitely, that the Senate Committee did *not* intend a radical change from the House bill. We know that the Senate Committee did *not* intend to work a drastic change in equity practice. We know that the Senate Committee did *not* intend to evidence a lack of faith in the courts by coercing judicial action. What we find, on the contrary, is an intent to place Section 205(a) of this statute in the same category as "substantially all regulatory statutes". We find an intent that the court shall enter whatever order is proper "to enforce compliance"—not an order to punish. We find an intent that the court shall concern itself with "the circumstances of each particular case" so that it may find out what order is proper to protect the public *in the future* —"to enforce compliance". We find, in sum, an intent that the court shall do exactly what the District Court did in the present case.

The extent to which the holding of the majority below ignores this plain manifestation of Congressional intent is shown by a remark in the concluding paragraph of the opinion—"the limitation upon the court's discretion is unusual, * * *" (R. 604). That statement, as it describes the majority's interpretation, is true; yet it is in flat contradiction to the language of the Senate Report, *supra*, p. 29, "in common with substantially all regulatory statutes". There could be no better evidence of the extent to which the majority below have overlooked the legislative history.

The same comment may be made with respect to the reference by the majority to the remarks of the Senate Committee on the importance of price control (R. 603-604). Of course, Congress knew that there was an

emergency, and that price control was vital—and it still is. But the emphasis which it placed on the dangers of inflation serve to highlight the statement which we have quoted above *from the same report*, that the injunction features of the bill were "in common with substantially all regulatory statutes." Congress recognized the emergency, but it *did not recognize* the need which the Administrator is trying to say it did—that we must have a drastic revision of equity jurisprudence. New enforcement procedures were devised, it is true—criminal penalties, treble damage suits, even administrative licensing—but the procedure of injunctions was *not* drastically changed, it was kept like it had been in "substantially all regulatory statutes."

As an escape from this plain indication of Congressional intent the Administrator has sought to show that there are some regulatory statutes which strip the courts of all discretion, and that this merely follows in their pattern. See Memorandum on Application for Certiorari, pp. 10-11. Several statutes are supposed to be in that category—the Clayton Act,[7] the Federal Trade Commission Act,[8] the National Labor Relations Act,[9] and the Investment Acts of 1940.[10]

At the outset, it is apparent that this dichotomy, even if it did exist, would not support the Administrator's argument. The Senate Committee, which framed the final language of Section 205(a), was certainly not choosing one of two alleged types of statutes. What it *did* say was that Section 205(a) was "in common with substantially all regulatory statutes." Indeed, no-

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[7] Act of Oct. 15, 1914, c. 323, 38 Stat. 734, 15 U. S. C. Sec. 21.

[8] Act of Sept. 26, 1914, c. 311, 38 Stat. 719, 15 U. S. C. Sec. 45.

[9] Act of July 5, 1935, c. 372, 49 Stat. 453, 29 U. S. C. Sec. 160(e).

[10] Act of Aug. 22, 1940, c. 686, 54 Stat. 842, 853, 15 U. S. C. Secs. 80a-41; 80b-9.

where in the legislative history of Section 205(a) is there any suggestion that Congress or anyone else was aware of a classification of regulatory statutes into two types. No such distinction, and obviously no such choice between types of regulatory statutes, was suggested to Congress by OPA when the Emergency Price Control Act was first proposed. The Memorandum from OPACS (predecessor to OPA) which accompanied the original bill (H. R. 5479) stated that Section 205(a) "authorizes the customary remedies by injunction." Nowhere in the House Report (H. Rep. No. 1409, 77th Cong., 2d Sess.) in the hearings or in the debates, is there even a suggestion that Congress was adopting one or the other of two distinct types of injunction provisions.

The conclusion seems to be inescapable that the Administrator is trying to create a Congressional intent out of thin air—trying to create a choice which Congress never made. Congress thought it was enacting the usual regulatory statute, and, we submit, that is what it did.

The Construction of Other Regulatory Statutes Indicates That the Court Has Discretion

The Administrator, of course, does not assert that "substantially all regulatory statutes" strip the courts of all discretion. The issue has frequently arisen under the Fair Labor Standards Act of 1938.[11] Notwithstanding consistent attempts by the Government to induce the courts to hold that they were stripped of discretion by that Act, the decisions are unanimously to the contrary. *Walling v. T. Buettner & Co.*, 133 F. (2d) 306

[11] Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. Sec. 217.

(C. C. A. 7th, 1943), *certiorari denied*, 319 U. S. 771; *Walling* v. *Woodruff*, 49 F. Supp. 52 (M. D. Ga. 1942); *Fleming* v. *National Bank of Commerce*, 41 F. Supp. 833 (S. D. W. Va. 1941); *Fleming* v. *Phipps*, 35 F. Supp. 627 (Md. 1940); *Fleming* v. *Hoerman*, 6 Labor Cases, par. 61,283 (Kans. 1942); *Fleming* v. *Lincoln Looseleaf Warehouse Co.*, 5 Wage Hour Rep. 615 (E. D. Tenn., 1942); *Fleming* v. *Kull*, 4 Wage Hour Rep. 411 (E. D. Tex. 1941). In *Fleming* v. *Phipps*, *supra*, the Government urged the grounds of policy and necessity similar to those urged by the Administrator in the present case. Counsel stated in the *Phipps* case that an injunction should issue on the following grounds (35 F. Supp. at p. 630):

> "(1) That the failure to issue the injunction in view of the admitted violation of the Act in the past by the defendant would impliedly be a vindication of the defendant and an encouragement to others engaged in similar business activities to violate the Act; (2) because the Administrator has a limited appropriation for the enforcement of the Act and is unable to effectively 'police' the industry in which the defendant is engaged, and therefore wishes an injunction against further violation of the Act by the defendant in order that if such violations occur the defendant can be summarily disciplined on contempt charges without a jury trial; (3) that an injunction would be of assistance to the Administrator in possible future proceedings against the Long Lumber Company for alleged violation of the Act in the shipment in interstate commerce of lumber produced in violation of the terms of the Act. * * *"

The court, in denying the injunction, stated (*ibid.*):

> "The special reasons urged by counsel for the Administrator for the injunction in this case seem

to be for indirect and collateral objectives rather than in accordance with the usual equity rules relating to injunctions. *It would seem to be elementary that the purpose of an injunction is to deter rather than to punish.* Section 16(a) of the Act provides an adequate scope of punishment by the ordinary criminal procedure. Of course the provisions for injunction and for criminal prosecution are alternative remedies, but *the injunction should not be granted unless there is adequate cause shown therefor in accordance with applicable principles of equity.*" (Italics ours.)

As the Administrator conceded in his Memorandum on Certiorari (pp. 10-11) Congress also left discretion in the courts in the Sherman Act (Act of June 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. Sec. 4), the Securities Act of 1933 (Act of May 27, 1933, c. 38, 48 Stat. 86, 15 U. S. C. Sec. 77t (b)), and the Securities Exchange Act of 1934 (Act of June 6, 1934, c. 404, 48 Stat. 882, 15 U. S. C. Sec. 78aa). The list could be almost indefinitely extended. See, *e. g.*, Federal Power Act (Act of June 10, 1920, c. 285, 41 Stat. 1076, 16 U. S. C. Sec. 820); *ibid.* (Act of August 26, 1935, as amended, c. 687, 49 Stat. 861, 16 U. S. C. Sec. 825m(a)); Agricultural Association Act (Act of February 18, 1922, c. 57, 42 Stat. 388, 7 U. S. C. Sec. 292); Farmers' Cooperative Associations Act (Act of March 4, 1937, c. 508, 44 Stat. 1424, 15 U. S. C. Sec. 433); Agricultural Adjustment Act of 1933 (Act of May 9, 1933, c. 263, 48 Stat. 672, 7 U. S. C. Sec. 608a(6); Hot Oil Act (Act of February 22, 1935, c. 18, 49 Stat. 33, 15 U. S. C. Sec. 715i(a); Public Utility Holding Company Act of 1935 (Act of August 26, 1935, c. 687, 49 Stat. 831, 15 U. S. C. Sec. 79r(f); Federal Alcohol Administration Act (Act of August 29, 1935, c. 814, 49 Stat. 985, 27 U. S. C. Sec. 207); Sugar Act of 1937 (Act of September 1, 1937, c. 898, 50

Stat. 915, 7 U. S. C. Sec. 1175); Natural Gas Act (Act of June 21, 1938, c. 556, 52 Stat. 833, 15 U. S.C. Sec. 717u); Civil Aeronautics Act (Act of June 23, 1938, c. 601, 52 Stat. 1025, 49 U. S. C. Sec. 647(a)); Federal Food, Drug and Cosmetic Act (Act of June 25, 1938, c. 675, 52 Stat. 1043, 21 U. S. C. Sec. 332(a)); Alteration of Bridges Act (Act of June 21, 1940, c. 409, 54 Stat. 500, 33 U. S. C. Sec. 519); Interstate Commerce Act (Part III—Water Carriers) (Act of September 18, 1940, c. 722, 54 Stat. 946, 49 U. S. C. Sec. 916(b)); Interstate Commerce Act (Part IV—Freight Forwarders) (Act of May 16, 1942, c. 318, 56 Stat. 297, 49 U. S. C. Sec. 1017(b)).

But apart from all this, there are several other objections to this feature of the Administrator's argument. The Investment Acts of 1940, which contain language similar to that in Section 205(a) may be put to one side: there is no construction, administrative or judicial, of either act which would assist in determining what they mean. Without attempting to exhaust the subject, however, it should be pointed out that the legislative history of these acts gives no hint of any awareness by Congress that it was choosing one of two alternative forms of injunctive relief provisions. See H. Rep. No. 2639, S. Rep. No. 1775, 76th Cong., 3d Sess.

The Federal Trade Commission and National Labor Relations Board cases, however, upon which the Administrator chiefly relies, are wide of the mark, and furnish no precedent for the interpretation of Section 205(a) which the Administrator urges. The National Labor Relations Act, for example, provides in Section 10(c) that if *the Board* shall be of the opinion that any person named in the complaint—

> has engaged in or is engaging in any such unfair labor practice, then the Board * * * shall issue * * * an order requiring such person to cease and desist from such unfair labor practice * * *.

The language, plainly, refers to the Board's action, and not to the action of the courts, and it furnishes no parallel with the language of Section 205(a). Moreover, the actual practice under Section 10(c) of the National Labor Relations Act is directly contrary to that which would be required by the Administrator's construction. As the Administrator would read Section 10(c) the Board would be *forced* to issue a cease and desist order whenever it found an unfair labor practice—no matter when it happened or what the circumstances were. Patently, Congress intended no such absurd result; Congress wanted the Board to exercise its sound judgment, not to direct in advance and in all cases what that judgment *must* be. And, as one would expect, that is precisely what the Board has done. There are numerous cases in which the Board has declined, in the exercise of a sound discretion, to issue a cease and desist order where the violations of the Act have ceased under circumstances which would indicate that they would not be resumed. See, *e.g.*, *Gloray Knitting Mills*, 19 N. L. R. B. 712 (1940), *Stromberg-Carlson Telephone Mfg. Co.*, 18 N. L. R. B. 526 (1939), *Decatur Iron & Steel Co.*, 17 N. L. R. B. 1073 (1939), *Wickwire Bros.*, 16 N. L. R. B. 316 (1939), *Simplicity Pattern Co., Inc.*, 16 N. L. R. B. 294 (1939), *International Agricultural Corp.*, 16 N. L. R. B. 176 (1939), *Hope Webbing Co.*, 14 N. L. R. B. 55 (1939), *Godchaux Sugars, Inc.*, 12 N. L. R. B. 568 (1939), *Shenandoah-Dives Mining Co.*, 11 N. L. R. B. 885 (1939), *A. H. Wirz, Inc.*, 9 N. L. R. B. 480 (1938), *Talledega Cotton*

Factory, 9 N. L. R. B. 207 (1938), *Ferguson Bros. Manufacturing Co.*, 9 N. L. R. B. 189 (1938).

And the same is true of the Federal Trade Commission. Again, the "shall issue" language (15 U. S. C. Sec. 45(b)) applies to the *Commission*, not to the Courts. Again, the position of the Administrator would require that the *Commission* be stripped of all discretion, and compelled to issue a cease and desist order, whenever it found a violation, no matter when or under what circumstances it occurred. And again, the practice of the Commission is directly opposed to the Administrator's position; there are numerous decisions, see, *e.g.*, *Fels & Co.*, 34 F. T. C. D. 1536 (1942); *Golding Bros. Co., Inc.*, 33 F. T. C. D. 1631 (1941); *Clover Farm Stores Corp.*, 32 F. T. C. D. 1635 (1941); *The Texas Co.*, 25 F. T. C. D. 1509 (1937); *Sanford Hosiery Mills*, 25 F. T. C. D. 1506 (1937); *Friehofer Baking Co.*, 25 F. T. C. D. 1505 (1937); *Carl Smith, d.b.a. Fashion Silk Co.*, 25 F. T. C. D. 1503 (1937); *M. J. Levinson, d.b.a Lewis, Francine Laboratories Co.*, 25 F. T. C. D. 1499 (1937); see *Annual Report of the Federal Trade Commission* (1942), pp. 64-65. Compare, *L. B. Silver Co.* v. *Federal Trade Commission*, 292 Fed. 752 (C. C. A. 6th, 1923); *Federal Trade Commission* v. *Civil Service Training Bureau*, 79 F. (2d) 113 (C. C. A. 6th, 1935); *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910 (C. C. A. 2d, 1925).

The practice under the National Labor Relations Act seems to have been recognized in *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261 (1938). In that case this Court stated (303 U. S. at p. 265):

> * * * Section 10(c) directs that when the Board finds that any person has engaged in unfair labor practices it "*shall issue* * * * an order requiring

> such person to cease and desist from such unfair labor practice, *and* to take such affirmative action * * * as will effectuate the policies of this Act. * * *" Notwithstanding the mandatory form of Section 10(c), its provisions in substance leave to the Board some scope for the exercise of judgment and discretion in determining, upon the basis of the findings, whether the case is one requiring an affirmative order * * *. (Italics ours.)

The majority below (R. 599-600), relying upon the word "affirmative" in this statement, concluded that the discretion applied to only a portion of the order. Actually, the Court, while referring to Section 10(c) as mandatory in form, seems to have given recognition to the practice of the Board noted above in exercising its discretion with respect to whether any order at all was necessary. The dissenting opinion below seems much closer to the correct interpretation of the paragraph when it points out that the conjunctive connection of "cease and desist" and "affirmative action" make the words "shall issue * * * an order" equally applicable to both.

Perhaps we should repeat again that the issue under Section 205(a), in this case, is *not* whether the court *may* issue an injunction on past violations. Certainly it may, if it believes that an injunction will aid in the enforcement of the Act. By the same token, the Administrator does not prove his point by pointing out that the National Labor Relations Board and the Federal Trade Commission *may* in their discretion issue a cease and desist order on past violations (*Cf.* Memorandum on Certiorari, pp. 12-14). The real issue is whether, under those statutes the Board and the Commission *must* without any discretion issue a cease and desist order. Long and consistent administrative construction over many years shows that discretion does

exist. The same construction should apply to Section 205(a) in the present case.

Thus the conclusion must be that the other statutes upon which the Administrator relies do not help him. They do not show that "substantially all regulatory statutes" strip the courts of discretion. On the contrary, they show that similar language has been given a consistent and long-standing administrative construction which fully bears out the position which we now urge.

Decisions Under the Present Statute Support the View That the Court Has Discretion

The decisions of the lower courts under Section 205(a) are strongly inclined in favor of our construction of the section, although all of them are in the District Courts. There are a large number which hold that the Federal equity courts have discretion in spite of the fact that violations have been shown or have been admitted. *Brown* v. *Southwest Hotels, Inc.*, 50 F. Supp. 147 (E. D. Ark. 1943); *Brown* v. *Mannebach*, 1 Price Control Cases, par. 50,980 (N. D. Ill. 1943); *Henderson* v. *Sonken-Galamba Corp.*, 1 Price Control Cases, par. 50,901 (W. D. Mo. 1942); *Brown* v. *Quinlan, Inc.* (N. D. Ill.) (unreported), *reversed on other grounds and remanded*, 138 F. (2d) 288 (C. C. A. 7th, 1942); *Brown* v. *Russell Packing Co.*, 1 Price Control Cases, par. 50,979 (N. D. Ill. 1943); *Brown* v. *El Paso Iron & Metal Co.*, 1 Price Control Cases, par. 51,001 (W. D. Tex. 1943); *Brown* v. *Conner*, 1 Price Control Cases, par. 50,981 (S. D. Tex. 1943); *Brown* v. *May Hardwood Co.* (W. D. Ky.) (unreported); *Brown* v. *Regal Typewriter Co.*, 52 F. Supp. 113 (S. D. N. Y. 1943); *Brown* v. *Dweck*, 1 Price Control Cases, par. 51,006 (S. D. N.

Y. 1943); *Brown* v. *Purvin*, 1 Price Control Cases, par. 50,985 (S. D. N. Y. 1943); *Brown* v. *Standard Oil Co. of Ky.*, 1 Price Control Cases, par. 50,991 (N. D. Ala. 1943); *Brown* v. *McNeil*, 1 Price Control Cases, par. 51,815 (W. D. Wis. 1943); *Brown* v. *Douglass*, 50 F. Supp. 877 (N. D. Tex. 1943); *Brown* v. *Hannum*, 50 F. Supp. 697 (W. D. Tex. 1943). One more has a dictum to the same effect. *Henderson* v. *J. B. Beaird Corp.*, 48 F. Supp. 252 (W. D. La. 1943). One has a dictum in accord with the majority of the Court of Appeals, but the case is wholly different on the facts, since the court specifically found that the defendants there were determined not to comply unless forced to do so. *Henderson* v. *Baldwin*, 1 Price Control Cases, par. 51,711 (W. D. Pa. 1942). Only two district court decisions thus far appear to be in accord with the Court of Appeals in the present case, but in neither does the decision give enough information to show what the equities were. *Brown* v. *Society Brand Hat Co.*, 1 Price Control Cases, par. 50,965 (E. D. Mo. 1943); *Brown* v. *Osorio*, 1 Price Control Cases, par. 50,977 (D. P. R. 1943). The Administrator alleges that *Henderson* v. *C. Thomas Stores*, 48 F. Supp. 295 (Minn. 1942) is in accord with the majority below. That case, however, is wholly different. The court found "apathy and indifference" and "inexcusable carelessness". No attempt was made to correct mistakes. In such a case an injunction properly issues. There was no equity whatever on the side of the defendant.

Public Policy Supports Discretion

The Administrator has sought, throughout this case, to find support for his extreme construction of the statute on grounds of public policy. He argues that if

the Federal equity courts have no discretion in the matter of injunctions he would be aided in his enforcement program. As he states it in his Memorandum on Certiorari (p. 14), if there is no discretion in the Federal equity courts "the sanction is applied after two sets of violations, of investigations and of judicial proceedings rather than after three."

That analysis, we submit, is obviously faulty. Even the Administrator admits that if an *injunction* were violated, no punishment would be imposed by the court if the violations were not wilful. Hence, if the second investigation revealed only *innocent* violations it would not result in sanctions being applied whether there were an injunction in force or not. On the other hand, if the second investigation revealed *wilful* violations of the Act or regulations, the Administrator has sanctions immediately available in the form of criminal penalties, again whether there were an injunction in force or not. Actually, therefore, sanctions have been made available by Congress, and can be applied, after *any* investigation which discloses the necessity for a sanction—whether it be the first investigation, or the fifth. That is what we believe Congress intended—that sanctions be applied when they were necessary. We do not believe that Congress intended that an injunction should issue, as in the present case, when it is not necessary, and when its sole effect would be to damage the reputation of a reputable, long-established business which has made every effort to accomplish full compliance with the statute.

In our view, the public policy involved in this case is of quite a different character. It is one of the highest order, but it is one which condemns, not supports, the Administrator's argument.

By long tradition, equity courts have been able to render a decree consonant with all of the facts and circumstances of the case. That has been the essence of equity jurisdiction—the power to do equity. The absence of such power in courts of law was the occasion for the rise of the Chancellor's jurisdiction, and its continued absence in law cases has been the occasion for the continuance of equity jurisdiction. There should be no quarrel with the proposition which was very recently stated by this court in *Meredith* v. *City of Winter Haven* (No. 42, Oct. Term, 1943):

> An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity.

This jurisdiction, of course, stems from the Constitution, which confers on the federal courts jurisdiction over "all cases in equity arising under the laws of the United States." Article III, Section 2.

The Administrator, however, would upset this. He would, as we have pointed out above, destroy every element of discretion. He would, in effect, *coerce* the courts to decide a case in his favor and issue an injunction when he could not get it, and should not get it, on the merits of his case. In the case at bar, he insists that the District Court, which exercised its discretion, was not entitled to do so, and that it must be reversed for acting as an equity court.

There are some state decisions in which the courts have refused to construe statutes as coercing judicial action because of constitutional doubts. Compare *People ex rel. Morse* v. *Nussbaum*, 32 Misc. 1, 66 N. Y. Supp. 129 (1900); *In re Davies*, 168 N. Y. 89, 61 N. E.

118 (1901); *Parkison* v. *Thompson*, 164 Ind. 609, 73 N. E. 109 (1905). Probably a construction of Section 205(a) which would result in a Congressional attempt to coerce judicial action would not be valid under the Federal Constitution.[12] The independence of the judicial branch would be, *pro tanto*, destroyed, and destroyed in a field in which its independence has been its most basic characteristic, as the *Meredith* case, *supra*, indicates.

But whether we phrase the issue in terms of constitutional limitations or not is unimportant. What is important is that this Court is asked to approve a construction of a statute which would work a revolution in our judicial system, and which would drastically reduce the stature of the Federal Courts. Reduced to its essence, the Administrator's argument is that the statute should be construed to deprive the courts of discretion because the courts cannot be trusted to exercise discretion. Does the Administrator think that the courts are less patriotic than he; less aware of the dangers of inflation; less aware of the necessity for vigorous enforcement of price control? If he does think so, we, emphatically, do not. We believe the courts will

[12] The situation under the National Labor Relations Act, cited by the Administrator, is not at all comparable. Under that Act, and the others on which the Administrator relies, the courts have, in effect, an appellate review over a body which has *already* exercised a discretion in deciding whether a sanction is necessary at all, and, if so, in shaping it to fit the demands of the individual case. On review the courts act only when the decision of the administrative agency has been made arbitrarily or without legal warrant. In those cases, the courts are simply supplying an additional safeguard before administrative sanctions are made final. But in such cases the exercise of discretion by the administrative tribunal is surrounded with the normal safeguards—hearings, reports, exceptions, briefs, and the like. Under the Price Control Act there are no such safeguards until the case comes into the District Court.

respond to the emergency.[13] We believe that they will recognize the dangers in creeping inflation. We also believe that they will do it with regard for justice and fair dealing in the cases in which they are asked to act. That is what the District Court did in this case.

CONCLUSION

Wherefore, we submit that the decision of the Court of Appeals for the District of Columbia should be reversed, and the judgment of the District Court should be affirmed.

Respectfully submitted,

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December, 1943.

[13] As of June, 1943, the OPA reported that it had sought injunctions in 948 cases, and that injunctions had been granted in 924 of them.

APPENDIX

STATUTE AND REGULATION INVOLVED.

Emergency Price Control Act of 1942, (Act of January 30, 1942, c. 26, 56 Stat. 23, 50 USCA App. Sec. 901).

PROHIBITIONS.

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

ENFORCEMENT.

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. * * *

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. * * *

General Maximum Price Regulation.

(Federal Register, Thursday, April 30, 1942, 7 Fed. Reg. 3153).

Maximum Prices.

§ 1499.1 *Prohibition against dealing in commodities or services above maximum prices.* On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No *person* shall *sell* or deliver any *commodity*, and no person shall sell or supply any *service*, at a price higher than the maximum price permitted by this General Maximum Price Regulation; and

(b) No person in the course of trade or business shall buy or receive any commodity or service at a price higher than the maximum price permitted by this General Maximum Price Regulation.

§ 1499.2 *Maximum prices for commodities and services: General provisions.* Except as otherwise provided in this General Maximum Price Regulation, the *seller's* maximum price for any commodity or service shall be:

(a) *In those cases in which the seller dealt in the same or similar commodities or services during March 1942:*

The highest price charged by the seller during such month—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service, most nearly like it; or

(b) *In those cases in which the seller did not deal in the same or similar commodities or services during March 1942:*

The highest price charged during such month by the *most closely competitive seller of the same class*—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

"Highest Price Charged During March 1942"

For the purposes of this General Maximum Price Regulation, the highest price charged by a seller "during March 1942" shall be:

(a) The highest price which the seller charged for a commodity *delivered* or service *supplied* by him during March 1942; or

(b) If the seller made no such delivery or supplied no such service during March 1942 his highest *offering price* for delivery or supply during that month.

No seller shall change his customary allowances, discounts or other price differentials unless such change results in a lower price. The "highest price charged" shall be a price charged during March 1942 to a *purchaser of the same class*. But if during March 1942 a seller (1) had an established practice of making allowances, discounts or price differentials to different classes of purchasers, and (2) raised his general level of prices, but thereafter during March 1942 made no delivery to any purchaser of a particular class he shall, for that particular class of purchaser calculate the highest price charged by taking the highest price charged during March 1942 to a purchaser of another class and then adjusting such price to reflect his established allowances, discounts and price differentials. No seller shall require any purchaser, and no purchaser shall be permitted, to pay a larger proportion of transportation costs incurred in the delivery or supply of any commodity or service, than the seller required purchasers of the same class to pay during March 1942 on deliveries or supplies of the same or similar types of commodities or services.

"Similar Commodities or Services"

One commodity shall be deemed "similar" to another commodity, if the first has the same use as the second, affords the purchaser fairly equivalent serviceability, and belongs to a type which would ordinarily be sold in

the same price line. In determining the similarity of such commodities, differences merely in style or design which do not substantially affect use, or serviceability, or the price line in which such commodities would ordinarily have been sold, shall not be taken into account. One service shall be deemed "similar" to another service if the first has the same use and purpose as the second and belongs to a type which would ordinarily be sold for the same or substantially the same price.

§ 1499.3 *Maximum prices for commodities which cannot be priced under § 1499.2.* The seller's maximum price for a commodity which cannot be priced under § 1499.2 of this General Maximum Price Regulation shall be a maximum price in line with the level of maximum prices established by this General Maximum Price Regulation. Such price shall be determined by the seller in accordance with the following procedures:

(a) *Sales at wholesale or retail.* In the case of a *sale at wholesale or retail,* the seller (1) shall select from the same general classification and price range as the commodity being priced under this section, the comparable commodity for which a maximum price is established under § 1499.2 of this General Maximum Price Regulation and of which the seller delivered the largest number of units during March 1942; (2) shall divide his maximum price for that commodity by his *replacement cost* of that commodity; and (3) shall multiply the percentage so obtained by the cost to him of the commodity being priced under this paragraph. The resulting figure shall be the maximum price of the commodity being priced. Within ten days after determining such maximum price under this paragraph, the seller shall report such price to the *appropriate field office of Price Administration* upon a form, duly filled

out and signed under oath of affirmation, copies from the form contained in § 1499.24, Appendix A, of this General Maximum Price Regulation. The price so reported shall be subject to adjustment at any time by the Office of Price Administration.

(b) *Sales other than at wholesale or retail.* * * *

Records

§ 1499.11 *Base-period records.* Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

(a) Preserve for examination by the Office of Price Administration all his existing *records* relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and

(2) All his customary allowances, discounts, and other price differentials.

Any person, other than a person selling at retail, who claims that substantial injury would result to him

from making such statement available to any other person, may file it with the appropriate field office of the Office of Price Administration. The information contained in such statement will not be published or disclosed unless it is determined that the withholding of such information is contrary to the purposes of this General Maximum Price Regulation.

§ 1499.12. *Current records.* Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

§ 1499.13. *Maximum prices of cost-of-living commodities: statement, marking or posting.* For the purposes of this section, a cost-of-living commodity is any commodity designated as such by the Price Administrator. A list of the classes of commodities so designated appears in § 1499.25, Appendix B, of this General Maximum Price Regulation.

(a) On and after May 18, 1942, every person offering to sell a cost-of-living commodity at retail shall mark the maximum price of such commodity in a manner plainly visible to, and understandable by, the purchasing public. The maximum price may be marked on the commodity itself or on the shelf, bin, rack, or other holder or container upon or in which the commodity is kept, or it may be posted at the place in the business es-

tablishment where the commodity is offered for sale. The maximum price shall be stated as follows: "Ceiling Price $.....;" or "Our Ceiling $....." Any person choosing to post by price-lines the maximum prices of commodities in the classifications marked by asterisks in § 1500.25, Appendix B, shall post the maximum price by price-line at the place in the business establishment where the commodities in such price-line are offered for sale, and, in addition, shall mark the selling price of each such commodity on the commodity itself.

(b) On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the *appropriate War Price and Rationing Board* of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity.

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 316

THE HECHT COMPANY, PETITIONER

v.

PRENTISS M. BROWN, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

MEMORANDUM FOR RESPONDENT

OPINIONS BELOW

The memorandum opinion of the District Court (R. 441–447) is reported in 49 F. Supp. 528. The opinions of the United States Court of Appeals for the District of Columbia (R. 604–615) are not yet officially reported.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered on July 22, 1943 (R. 616). The petition for a writ of certiorari was filed in this Court on September 2, 1943. Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States as amended by the Act of February 13, 1925.

552221—43

QUESTION PRESENTED

Whether the Price Administrator, upon showing that a defendant has engaged in acts and practices violative of Section 4 of the Emergency Price Control Act of 1942, is entitled as of right under Section 205 (a) of the Act to an injunction restraining the defendant from engaging in such acts or practices.

STATUTE AND REGULATION INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of Jan. 30, 1942, 56 Stat. 23, 50 U. S. Code Appendix, Supp. II, Sec. 901), and the General Maximum Price Regulation (7 Fed. Reg. 3153) issued thereunder.

The applicable provisions of the Emergency Price Control Act are the following:

> SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

SECTION 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

The General Maximum Price Regulation, issued under Section 2 of the Emergency Price Control Act on April 30, 1942 (7 Fed. Reg. 3153), reads in pertinent part as follows:

SECTION 1499.1 *Prohibition against dealing in commodities or services above maximum prices.*—On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No *person* shall *sell* or deliver any *commodity,* and no person shall sell or supply any *service,* at a price higher than the maximum price permitted by this General Maximum Price Regulation; * * *

SECTION 1499.2 *Maximum prices for commodities and services: general provisions.*—Except as otherwise provided in this General Maximum Price Regulation, the *seller's* maximum price for any commodity or service shall be:

(a) *In those cases in which the seller dealt in the same or similar commodities or services during March 1942:*

The highest price charged by the seller during such month—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service, most nearly like it; or

(b) *In those cases in which the seller did not deal in the same or similar commodities or services during March 1942:*

The highest price charged during such month by the *most closely competitive seller of the same class*—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

* * * * *

SECTION 1499.11 *Base-period records.*—Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall:

(a) Preserve for examination by the Office of Price Administration all his exist-

ing *records* relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

(b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and

(2) All his customary allowances, discounts, and other price differentials.

* * * * *

SECTION 1499.12. *Current records.*—Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possi-

ble, the basis upon which he determined maximum prices for those commodities or services.

* * * * * *

SECTION 1499.13. * * *

(b) On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the *appropriate War Price and Rationing Board* of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity.

STATEMENT

The petitioner is a company operating a department store in Washington, D. C., divided into 107 departments, each selling a separate line of merchandise (R. 449). This suit, brought by the Administrator, was the outgrowth of an investigation made by him in September 1942, to ascertain whether the company was complying with the Price Control Act and the General Maximum Price Regulation.

The complaint, seeking injunctive relief under the Act, was filed in December 1942, and

charged the Company with having violated the Act and Regulation (a) in selling commodities at prices in excess of the maximum price permitted by the Regulation; (b) in failing to prepare and keep the statement required by section 1499.11 of the Regulation; (c) in failing to prepare and file with the appropriate War Price and Rationing Board a statement relating to cost-of-living commodities in conformity with section 1499.13 of the Regulation; (d) in failing to keep its statement relating to cost-of-living commodities up to date in conformity with section 1499.13 of the Regulation; and (e) in failing to keep current records in conformity with section 1499.12 of the Regulation (R. 1–3).

The company in its answer denied generally the essential allegations of the complaint and further pleaded that any failure or neglect to comply with the Regulation was wholly involuntary, was corrected as soon as discovered, and was so inconsequential and unsubstantial compared with the substantial compliance by the company that it did not constitute a basis for the issuance of an injunction against the defendant (R. 13).

In investigation made by the Administrator there was of necessity no attempt to examine thoroughly into every department of the store or into every sale made in the departments investigated. It was simply a "spot check" (R. 27, 42, 45, 46) confined to seven departments of the company's store. In each department investigated

the examination disclosed numerous violations of the Act and the Regulation. Because the scope of the investigation was confined to the seven departments mentioned no search was made for violations of the Act and Regulation in other departments except to ascertain whether the company was posting its ceiling prices as required by the Regulation. Consequently, no evidence with reference to those departments was offered at the trial.

The evidence showed without dispute that in a period of only five months in but seven of the 100 or more departments the company, in direct violation of the Regulation, (1) made 3,838 sales at prices in excess of the legal maximum; (2) collected at least $4,623.15 more than it was legally entitled to do; (3) failed to include on the cost-of-living statement which it was required to file with the appropriate War Price and Ration Board more than 460 articles which should have been included thereon; and (4) failed to describe with sufficient clarity more than 446 items scheduled on the cost-of-living statement which it did file.

At the trial the company did not dispute the fact that it had violated the Act and Regulation, but by way of confession and avoidance offered evidence tending to show that it had not wilfully violated the Act, had acted in good faith, and had made a bona fide effort to comply with the Act and Regulation. The evidence so offered is fully

summarized in the findings of fact set forth at length in the company's petition for certiorari.

The district court handed down an opinion stating that while the company had violated the law, the violations were few in comparison with the total volume of business transacted by the company and innocent in character; that the company had acted in good faith and had made a bona fide effort to comply with the law and had substantially complied therewith. It directed that a temporary restraining order be dissolved and the complaint dismissed. Findings of fact and conclusions of law and a formal judgment followed. (R. 441–454.)

On appeal the United States Court of Appeals for the District of Columbia, one member dissenting, reversed the judgment, holding that where violations of the Act and Regulation are shown or admitted the Administrator's right to an injunction under the statute is absolute (R. 604–615).

DISCUSSION

The decision of the Court of Appeals is not in conflict with the decision of any appellate court. It is in harmony with the decisions of a number of district courts,[1] though other district courts

[1] *Brown, Administrator*, v. *Society Brand Hat Company* (E. D. Mo. June 17, 1943); *Henderson* v. *Baldwin*, OPA Service 622:43 (W. D. Pa. 1942); *Henderson* v. *C. Thomas Stores, Inc.*, 48 F. Supp. 295 (D. Minn.); *Brown* v. *John H. Maxwell* (N. D. Tex. Feb. 25, 1943, not yet reported, pending on rehearing on issue of treble damages).

followed the decision of the district court in the present case before it was reversed on appeal (see Pet. 25). The question presented is of substantial importance in the enforcement of the Emergency Price Control Act, and for that reason we do not feel justified in opposing the petition.[2]

We wish to point out, however, that the question is neither so novel nor so difficult as petitioner suggests. The case involves a statutory injunctive remedy provided for the vindication of the public interest, and not resort to the general equity powers of the courts. In such a case, the "usual equitable grounds" for relief need not be shown, for "where an injunction is authorized by statute it is enough if the statutory conditions are satisfied." *Henderson* v. *Burd,* 133 F. (2d) 515, 517 (C. C. A. 2). See *United States* v. *San Francisco,* 310 U. S. 16; *United States* v. *Adler's Creamery,* 110 F. (2d) 482 (C. C. A. 2), certiorari denied, 311 U. S. 657.

The statutory conditions here prescribed—a showing that the defendant has engaged or is about to engage in acts or practices in violation of Section 4 of the Act—follow familiar legislative models. Congress might have taken as a prototype the injunctive provisions of statutes leaving a measure of discretion in the courts, as

[2] At the 1942 Term the Government sought, unsuccessfully, review of a cognate question under the Fair Labor Standards Act, asserting its importance. *Walling* v. *T. Buettner & Co.,* No. 1019, 1942 Term.

in the Sherman Act, or requiring a "proper showing"[3] or proof of present or threatened violations.[4] Instead, Congress adopted as a model those statutes which unambiguously provide for the issuance of an injunction or cease-and-desist order upon proof of past violations,[5] without any of the foregoing qualifications: the Investment Companies Act,[6] the Investment Advisors Act of 1940,[7] the Clayton Act,[8] the Federal Trade Commission Act,[9] and the National Labor Relations Act.[10] The legislative choice is underscored by the legislative history, as the court below pointed

[3] Securities Act of 1933, c. 38, Sec. 20, 48 Stat. 86, 15 U. S. C., sec. 77t; Securities Exchange Act of 1934, c. 404, Sec. 21, 48 Stat. 899, 15 U. S. C., sec. 78u; compare Fair Labor Standards Act, c. 676, Sec. 17, 52 Stat. 1060, 29 U. S. C., sec. 217. See *Securities and Exchange Comm'n* v. *Lawson*, 24 F. Supp. 360 (D. Md.).

[4] Securities Act and Securities Exchange Act, *supra*. See *Securities and Exchange Comm'n* v. *Torr*, 87 F. (2d) 446 (C. C. A. 2); *id.*, 22 F. Supp. 602 (S. D. N. Y.).

[5] The Commodities Exhange Act, after the decision in *Wallace* v. *Cutten*, 298 U. S. 229, was amended to permit revocation of a broker's license for past violations. See *Nichols & Co.* v. *Secretary of Agriculture*, 131 F. (2d) 651 (C. C. A. 1).

[6] Section 42 (Act of Aug. 22, 1940, c. 686, Title I, 54 Stat. 842, 15 U. S. C., sec. 80a–41).

[7] Section 209 (Act of Aug. 22, 1940, c. 686, Title II, 54 Stat. 853, 15 U. S. C., sec. 80b–9).

[8] Section 11 (Act of Oct. 15, 1914, c. 323, 38 Stat. 734, 15 U. S. C., sec. 21).

[9] Section 5 (Act of Sept. 26, 1914, c. 211, 38 Stat. 719, 15 U. S. C., sec. 45).

[10] Section 10 (c) (Act of July 5, 1935, c. 372, 49 Stat. 543, 29 U. S. C., sec. 160 (c)).

out; in a general revision of the bill designed greatly to strengthen it after our entry into the war, the Senate Committee substituted the present language for the phrase "upon a proper showing."

Under the Federal Trade Commission Act, which provides that the Commission "shall" issue a cease-and-desist order wherever it finds that a person has been using an unfair method of competition, the order will issue on such a finding, and if the finding is supported by evidence the courts will enforce the order. *Educators Ass'n* v. *Federal Trade Commission,* 108 F. (2d) 470 (C. C. A. 2); *Perma-Maid Co.* v. *Federal Trade Commission,* 121 F. (2d) 282 (C. C. A. 6). Good faith is not a defense, for reasons expressed by the court in *Gimbel Bros.* v. *Federal Trade Commission,* 116 F. (2d) 578 (C. C. A. 2), where an order was enforced against a company which had innocently misdescribed certain merchandise in an advertisement published on two days. The court observed that the purpose of the Act was the protection of the public and not the punishment of a wrongdoer; and the deception of purchasers is the same whether the misrepresentation was inadvertent or deliberate. A minatory order is well calculated to induce a higher degree of care against future lapses.[11] Nor is it material under

[11] Compare Holmes, J., concurring in *Arizona Employers' Liability Cases,* 250 U. S. 400, 431, 432–433:

"There is no more certain way of securing attention to the

the statute that violations have ceased. *Federal Trade Commission* v. *Goodyear Tire Co.*, 304 U. S. 257.[12]

Similarly, under Section 10 (c) of the National Labor Relations Act, while so-called "affirmative" orders rest in the discretion of the Board to effectuate the purposes of the Act, cease-and-desist orders are to be issued upon proof that unfair labor practices have been committed. Cf. *N. L. R. B.* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265. The petitioner's faint suggestion of a constitutional doubt under Article III if

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safety of the men, an unquestionably constitutional object of legislation, than by holding the employer liable for accidents. Like the crimes to which I have referred they probably will happen a good deal less often when the employer knows that he must answer for them if they do."

[12] See also *Buntè Bros.* v. *Federal Trade Commission*, 104 F. (2d) 996 (C. C. A. 7); *Educators Ass'n* v. *Federal Trade Commission*, 108 F. (2d) 470 (C. C. A. 2); *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282, 284 (C. C. A. 6); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 686 (C. C. A. 8); *Fairyfoot Products Co.* v. *Federal Trade Commission*, 80 F. (2d) 684, 686 (C. C. A. 7); *Federal Trade Commission* v. *A. McLean & Son*, 84 F. (2d) 910, 912 (C. C. A. 7); *Federal Trade Commission* v. *Wallace*, 75 F. (2d) 733, 738 (C. C. A. 8); *Federal Trade Commission* v. *Good-Grape Co.*, 45 F. (2d) 70 (C. C. A. 6); *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285 Fed. 853, 859–60 (C. C. A. 2, 1922); *Arkansas Wholesale Grocers Ass'n* v. *Federal Trade Commission*, 18 F. (2d) 866, 871 (C. C. A. 8); *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 310 (C. C. A. 7).

The case of *Federal Trade Comm'n* v. *Civil Service T. Bureau*, 79 F. (2d) 113 (C. C. A. 6), cited by petitioner (Pet. 22), was decided by the court whose later similar decision in the *Goodyear* case was reversed, 304 U. S. 257.

courts are not left with discretion to apply the usual canons of equity in statutory injunction cases (Pet. 23) is shortly disposed of by the accepted practice under these statutes, a practice which even more greatly narrows the judicial function in imposing the injunctive sanction, since there the facts are found by another tribunal.

As the separate opinion of the majority below aptly stresses (R. 611), any punitive remedy will not be applied until the injunctive order is violated, and if that occasion arises, the court will doubtless take into consideration the question whether the violations of the order have been trivial and whether they have been due to human frailty. If violations occur of a nature that the court regards as justifying a penalty for contempt, the result of the decision below is that the sanction is applied after two sets of violations, of investigations and of judicial proceedings rather than after three. Surely it is not extraordinary that Congress should have so provided in a statute the enactment of which was characterized by the Senate Committee as "imperative to the safety of our country" (R. 610), violations of which have an irreparable effect, and the enforcement of which is, by any standards, an immense task.

CONCLUSION

The decision below is correct and there is no conflict with decisions of other appellate courts.

The question presented is important, and for that reason we do not feel justified in opposing the petition.

Respectfully submitted.

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In the S[illegible] of the United States

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APPEALS [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 316

THE HECHT COMPANY, PETITIONER

v.

CHESTER BOWLES, PRICE ADMINISTRATOR OF THE OFFICE OF PRICE ADMINISTRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the District Court (R. 441–447) is reported in 49 F. Supp. 528. The opinion of the United States Court of Appeals for the District of Columbia (R. 593–610) is reported in 137 F. (2d) 689.

JURISDICTION

The judgment of the United States Court of Appeals for the District of Columbia was entered

on July 22, 1943 (R. 610–611). The petition for a writ of certiorari was filed in this Court on September 2, 1943. The order of this Court granting the petition was entered on October 18, 1943 (R. 612). Jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code of the United States as amended by the Act of February 13, 1925 (28 U. S. C., Sec. 347 (a)).

QUESTION PRESENTED

Whether the Price Administrator, having shown that a defendant has engaged in acts and practices violative of Section 4 of the Emergency Price Control Act of 1942, is entitled as of right to an injunction restraining such defendant from engaging in such acts and practices.

STATUTE AND REGULATION INVOLVED

The case involves the Emergency Price Control Act of 1942 (Act of Jan. 30, 1942, 56 Stat. 23, 50 U. S. C. Appendix, Supp. II, Sec. 901; hereinafter referred to as the Act), and the General Maximum Price Regulation (7 Fed. Reg. 3153; hereinafter referred to as the Regulation) issued thereunder.

The applicable provisions of the Act are Section 205 (a), under which this suit was begun, and Section 4 (a), which prescribes the unlawful acts for the restraint of which proceedings may be

instituted under Section 205 (a). Section 205 (a) reads as follows:

> Sec. 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 4 (a) reads:

> Sec. 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

The Regulation was issued under Section 2 of the Act on April 30, 1942, and became effective on May 18, 1942. The Regulation, so far as here pertinent, reads as follows:

§ 1499.1 *Prohibition against dealing in commodities or services above maximum prices.*—On and after the effective date of this General Maximum Price Regulation, regardless of any contract or other obligation:

(a) No *person* shall *sell* or deliver any *commodity,* and no person shall sell or supply any *service* at a price higher than the maximum price permitted by this General Maximum Price Regulation;

* * * * *

§ 1499.2 *Maximum prices for commodities and services: general provisions.*—Except as otherwise provided in this General Maximum Price Regulation, the *seller's* maximum price for any commodity or service shall be:

* * * * *

(a) The highest price charged by the seller during [March 1942]:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it; or

(b) In those cases in which the seller did not deal in the same or similar commodities or services during March 1942:

The highest price charged during such month by the *most closely competitive seller of the same class*—

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

* * * * *

§ 1499.11 *Base-period records.* — Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation, shall,

(a) Preserve for examination by the Office of Price Administration all his existing *records* relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and

(b) Prepare on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing:

(1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identi-

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fication of each such commodity or service; and

(2) All his customary allowances, discounts, and other price differentials.

* * * * * *

§ 1499.12 *Current records*—Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services.

* * * * * *

§ 1499.13 * * *

(b) On or before July 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the *appropriate war price and rationing board* of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the tenth day of every succeeding month a statement of

his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity.

STATEMENT

The record in this case contains substantially no conflict of testimony as to objective facts. The findings of fact of the district court (R. 447–454), which petitioner in its brief (Br. 3–13) quotes verbatim as its statement of the case, rest in general upon uncontroverted evidence. However, these findings present a limited and one-sided picture of the case proven without dispute by the Price Administrator; and, furthermore, we believe that certain conclusions, both of fact and of law, drawn by the district court are without warrant in the proof (e. g., certain statements in paragraph 12 of Findings of Fact (R. 453–454) and in paragraph 4 of Conclusions of Law (R. 454); cf. the comments in the opinion of the court below (R. 595–596)). Accordingly, we restate the case as we believe it should be presented to the Court.

The petitioner operates a department store in Washington, D. C. The store is divided into 107 departments, each selling a separate line of merchandise. (R. 449.)

In September 1942 the Office of Price Administration began an investigation to ascertain whether

the petitioner was complying with the Act and the Regulation. Because of practical exigencies no attempt was made to examine thoroughly into every department of the petitioner's store or into every sale made in the departments investigated. It was simply a "spot check". (R. 27, 42, 45, 46.) The investigation was confined to seven departments of the petitioner's store, namely, Department 55 (Women's Shoes), Department 47 (Women's Hosiery), Department 26 (Students' Clothing), Department 59 (Living Room Furniture), Department 60 (Bedding), Department 69 (Case Goods Furniture), and Department 76 (Occasional Furniture) (R. 25). In each department investigated the examination disclosed violations of the Act and of the Regulation (R. 596–597).

As a result of the investigation this action was started. The complaint charged the petitioner with having violated the Regulation (a) in selling and delivering and offering for sale or delivery commodities subject to the Regulation at prices in excess of the prices permitted thereby (Sec. 1499.1); (b) in failing to prepare on or before July 1, 1942, and thereafter to keep for examination by any person during ordinary business hours a statement prepared in accordance with Section 1499.11(b)(1) and (b)(2) of the Regulation; (c) in failing to keep current records in conformity with the provisions of Section 1499.12

of the Regulation; (d) in failing to prepare and file with the proper War Price and Ration Board a statement of its maximum prices in conformity with Section 1499.13 of the Regulation; and (e) in failing to keep the statement of its maximum prices up to date in conformity with the provisions of Section 1499.13 of the Regulation (R. 1–3).

The petitioner in its answer denied generally the essential allegations of the complaint and further pleaded that any failure or neglect to comply with the Regulation was wholly involuntary, was corrected as soon as discovered, and was so inconsequential and unsubstantial compared with the substantial compliance by the petitioner that it did not constitute a basis for the issuance of an injunction (R. 11–12).

At the trial proof of the Administrator's case was made by way of oral testimony and exhibits. The evidence so offered afforded a striking picture of the petitioner's widespread violation of the Regulation from May 18, 1942, to October 21, 1942.

The petitioner's witnesses admitted that in the four furniture departments alone (Departments 59, 60, 69 and 76) during the period from May 18, 1942, to October 22, 1942, 847 sales dealt with by the Administrator's evidence [1] were made

[1] The investigation in the four furniture departments was limited to those commodities which were delivered in March (R. 50, 57, 63, 67).

at prices above the maximum prices permitted by the Regulation, and that in these sales the petitioner had illegally obtained from its customers the sum of $3,351.53.[2] In at least 42 of these instances the sale prices not only exceeded the legal maximum prices, but even exceeded prices which the petitioner had reported to the Office of Price Administration as its legal maximum prices but which were, in fact, above the legal maximum.[3]

In many instances merchandise purchased after May 18, 1942, was sold without any prior establishment of legal maximum prices, and, further, was sold at varying prices, most if not all of which exceeded the retail sale prices set by the department heads at the time of purchase.[4] Petitioner's records were kept in such a manner that neither petitioner nor anyone else could ascertain whether these sales were at prices higher than the legal maximum (R. 55, 56, 60, 62, 66, 68, 70).

[2] Sales and overcharges by departments were as follows: Department 59, Living Room Furniture: 149 sales and $1,071 overcharges (Plaintiff's Exhibit 13, R. 546; Testimony, R. 358–375); Department 60, Bedding: 309 sales and $1,233.04 overcharges (Plaintiff's Exhibit 31, R. 478; Testimony, R. 243–263); Department 69, Case Goods: 225 sales and $732.87 overcharges (Plaintiff's Ex. 20, R. 515; Testimony, R. 292–320); Department 76, Occasional Furniture: 164 sales and $314.62 overcharges (Plaintiff's Exhibit 36, R. 537; Testimony, R. 342–356).

[3] R. 298–301, 305–306, 315–316, 318, 321–322, 324–325, 343, 347, 349–351, 398–399.

[4] Plaintiff's Exhibits 33, R. 512; 14, R. 554; 37, R. 545; 22, R. 530; 29, R. 477; 39, R. 465; 6, R. 456; Testimony, R. 237–240; 375–376; 337–340; 288–291; 205–207; 214.

In Departments 26 (Students' Clothing) and 47 (Women's Hosiery) petitioner's records were not adequate to permit identification of individual sales (R. 30, 40). However, the uncontroverted evidence showed that in Department 26 not less than 13 separate styles of merchandise were marked up and sold at excessive prices, resulting in overcharges of $104 (Plaintiff's Exhibit 7, R. 459; Testimony, R. 184–190, 401). Since no commodity was marked up more than $2.50 over the legal maximum price (Plaintiff's Exhibit 7, R. 459), it follows that in this Department there were not less than 41 illegal sales. Similar mark-ups of at least 10 styles of merchandise in Department 47 resulted in overcharges of $1,166 (Plaintiff's Exhibit 41, R. 469; Testimony, R. 215–224, 402); and since no commodity was marked up more than $0.40 over the legal maximum price (Plaintiff's Exhibit 41, R. 469), there were in this Department no less than 2,900 illegal sales.

It was thus proven without controversy that in six of the seven departments investigated[5] there had occurred during the period covered by the investigation a minimum of 3,788 sales at excessive prices, resulting in illegal overcharges of $4,621.53.

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[5] In Department No. 55 (Women's Shoes), while no sales over the ceiling prices were actually made, at least one commodity was offered for sale at over its ceiling price for a considerable period of time.

Petitioner's performance in preparing and filing its required Statements with the appropriate War Price and Ration Board was no more satisfactory. The testimony showed that at least 460 articles of merchandise sold by petitioner after the effective date of the Regulation were omitted from the Statements.[6] In the Statements which were introduced in evidence[7] 410 items included therein were listed without style numbers or other appropriate means of identification. The petitioner's witnesses admitted that prior to October 1, 1942, very few records were kept from which it could be determined how the maximum prices had been established for merchandise purchased after May 18, 1942. It is true that petitioner prescribed a form (Plaintiff's Exhibit 4, R. 470) for the making and keeping of such records, and one of petitioner's officials testified that he thought that several thousand of such forms had been filed up to the first of October (R. 230).

[6] Plaintiff's Exhibits 26, 27, and 28, R. 471, 475, 476; Testimony, R. 200–214; Plaintiff's Exhibit 6, R. 456; Testimony, R. 157–158; Plaintiff's Exhibits 39 and 40, R. 465 and 467; Testimony, R. 214, 35; Plaintiff's Exhibits 33 and 31, R. 512, 478; Testimony, R. 237–241, 259–263; Plaintiff's Exhibit 37, R. 545; Testimony, R. 337; Plaintiff's Exhibit 36, R. 537; Testimony, R. 342–356; Plaintiff's Exhibit 22, R. 530; Testimony, R. 288–290; Plaintiff's Exhibit 20, R. 515; Testimony, R. 292–320; Plaintiff's Exhibit 13, R. 546; Testimony, R. 358 to 375; Plaintiff's Exhibit 14, R. 554; Testimony, R. 375 to 377.

[7] Plaintiff's Exhibit 3, R. 572; Plaintiff's Exhibit 38, R. 589; Plaintiff's Exhibit 25, R. 586.

However, only two such forms were produced by petitioner at the trial (R. 240), and the testimony of the managers of the several departments, whose duty it was to complete and file the forms, indicated that the forms were neither understood nor extensively used (cf. R. 182, 192, 287–288). In any event, it was uncontroverted that the petitioner had on sale during the period covered by the investigation at least 349 items with respect to which no records whatsoever were kept which would show how the maximum prices had been determined.[8]

In short, the evidence showed without dispute that in a space of only five months, in but seven of its more than one hundred departments (the only seven of its departments investigated), the petitioner directly and plainly violated the clear and unambiguous terms of the Regulation,

[8] In each of the following departments at least the number of items indicated were purchased after May 18, 1942, in respect of which defendant failed to keep any record as to the manner of determining the maximum lawful price. Department 60: 20 items (Plaintiff's Exhibit 33, R. 512, Testimony, R. 237–240); Department 59: 47 items (Plaintiff's Exhibit 14, R. 554, Testimony, R. 375–376); Department 76: 17 items (Plaintiff's Exhibit 37, R. 545, Testimony, R. 337–340); Department 69: 113 items (Plaintiff's Exhibit 22, R. 530, Testimony, R. 288–291); Department 55: 47 items (Plaintiff's Exhibit 29, R. 477, Testimony, R. 205–207); Department 47: 34 items (Plaintiff's Exhibit 39, R. 465, Testimony, R. 214); Department 26: 71 items, (Plaintiff's Exhibit 6, R. 456, Testimony, R. 157–158).

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in that it (1) made 3,788 sales at prices in excess of the legal maximum, (2) collected at least $4,621.53 more than it was legally entitled to, (3) failed to include on the Statements which it was required to file with the appropriate War Price and Ration Board more than 460 articles which should have been included thereon, and (4) failed to describe with sufficient clarity more than 410 items scheduled on the Statements which it did file. Because the scope of the investigation made by the Office of Price Administration was confined to the seven departments mentioned, no investigation or search for violations of the Act or Regulation in other departments was made. Consequently, no evidence with reference to such other departments was offered at the trial except some evidence with reference to the petitioner's failure to post its maximum prices as required by the Regulation (R. 46–47).

The Administrator does not contend, and the evidence did not show, that these violations were wilful, nor, in the language of the district court (R. 444–445), "of disloyal motive or purpose". Admittedly, the petitioner made efforts to comply with the Act and the Regulation, both before and after the investigation started. According to its testimony offered in support of its affirmative defense, it set up a special department to supervise compliance with the requirements of the Act and the regulations issued thereunder, including the

Regulation here involved. This and other efforts at compliance, however, were not fully carried through and fell considerably short of success. The actual work of assembling the data for the preparation of the reports and statements made and filed by the petitioner, and the duty of determining the maximum lawful price of each article, were left to the managers of the several merchandising departments (R. 18). Forms and instructions were given to these managers, but the reports and statements which they prepared and the prices which they determined were not supervised or checked in any substantial sense by the specially established compliance department.[9] The managers of the departments investigated by the Office of Price Administration took the stand and endeavored to explain their violations of the Regulation as due to oversight and misinterpretation (R. 180, 200, 214, 235, 286, 336, 340, 356). There was also testimony to the effect that *after* the beginning of the Price Administrator's investigation the petitioner took steps to revise its organization and system so as to improve future compliance with the Act and Regulation (R. 230), endeavored wholeheartedly to comply with the

[9] Mr. Levi, who organized and for the first few months administered the petitioner's compliance department or "price control office", testified that he "spot-checked" the information furnished by the buyers for the preparation of the petitioner's statements, but that the check was "small and inadequate" (R. 125).

Act, and proposed to return to identifiable customers the overcharges collected from them and to donate the balance of overcharges to some worthy charity (R. 437).

On March 11, 1943, the district court handed down its opinion (R. 441–447), holding that while the petitioner had violated the law, the violations were "not numerous" in the light of the petitioner's total volume of business and the consequent difficulties of compliance; that the violations, although some might have resulted from negligence or carelessness, were innocent in character; and that the petitioner had acted in good faith and had made a *bona fide* effort to comply with the Act and the Regulation (R. 444). It directed that the temporary restraining order be dissolved and the complaint dismissed. Findings of fact and conclusions of law (R. 447) and a formal judgment (R. 455) followed.

On appeal, the court of appeals (Mr. Chief Justice Groner dissenting) reversed the judgment, holding that where a violation of the Act is shown an injunction should issue as of course.

SUMMARY OF ARGUMENT

Section 205 (a) of the Act conditions the right of the Administrator to an injunction or other order enforcing compliance with the Act solely upon a showing that the defendant has violated

or is about to violate the Act. Since at the trial the Administrator made a clear and uncontroverted showing of repeated and extensive violations by the petitioner, the district court was without discretion to deny the enforcement order requested.

The mandatory character of Section 205 (a) is clear from its language, in that it provides in terms that when the necessary showing has been made an appropriate order of enforcement "shall be granted without bond." There is no room for the application of any asserted rule of statutory interpretation which construes "shall" as permissive when directed by legislatures to courts. Such an interpretation here is precluded by the clear congressional intent, as shown by the background and the legislative history of the Act.

As passed by the House, Section 205 (a) provided for the issuance of an enforcement order "upon a proper showing" by the Administrator. This phrase, as used in comparable sections of earlier federal regulatory statutes, such as the Securities Act of 1933 and the Securities Exchange Act of 1934, had been diversely construed by the federal courts, and in some instances had been held to leave in the courts discretion to grant or withhold an enforcement order on the basis of traditional principles of equity jurisprudence applicable in private injunction suits. A similar provision for the issuance of injunc-

tions "for cause shown" had likewise upon occasion been construed to leave discretion in the courts. Other statutes, such as the National Labor Relations Act, the Federal Trade Commission Act, the Clayton Act, the Investment Company Act of 1940 and the Investment Advisers Act of 1940, had clearly provided for the issuance of injunctions or cease and desist orders upon proof of past violations, and their mandatory character had been accepted by the courts. The Senate Committee, which reported out the bill with amendments after December 7, 1941, chose the latter class of statute as a model, and to that end substituted for the phrase "upon a proper showing" the phrase "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." The stated purpose of the Senate Committee to strengthen the Act because of the incidence of war compels the conclusion that the change was intended to forestall judicial conflict, and to make clear that the issuance of an enforcement order was to be mandatory upon proof of violations.

There is no merit in the petitioner's suggestion that the phrase "or other order" opens the door to an order dismissing the complaint. Section 205 (a) on its face contemplates applications by the Administrator for either injunctive orders or affirmative orders "enforcing compliance." The

term "or other order" comprehends orders of the latter class. An order dismissing the complaint is not an order "enforcing compliance." Such an order would not ordinarily be said to be "granted" to the applicant, and is not the kind of order to which a direction for issuance "without bond" would be appropriate. The section-by-section analysis of the bill by the Senate Committee reenforces the plain meaning of the section which its words express.

Judicial maxims reflecting traditional equity practice in injunction suits between private parties have no application to this type of statutory injunction proceeding. Where an injunction is authorized by statute it is enough if the statutory conditions are satisfied. This does not improperly narrow the judicial functions of the courts; they retain their judicial authority and duty to take evidence, to find facts, to state and apply the law, and to fix the precise scope and character of the enforcement order. All that is withdrawn is the authority, after violations of the Act are shown, to decide whether the balance of equities, or the public interest, requires the issuance of an enforcement order. On that question, and on that question alone, Congress has substituted its own judgment.

The imposition of an injunctive sanction regardless of the good faith of the defendant is not remarkable nor inconsistent with legislative tra-

dition. Remedial social legislation directed at such evils as the narcotic traffic, or the misbranding of foods and drugs, has been held properly to impose even criminal sanctions upon innocent violators, in the greater public interest of stamping out the objectionable practices. Protection against the unintentional contributor to inflation is necessary to national economic safety; and there is even less reason for quarreling with the mild civil sanction of injunction in such cases than for objecting to the criminal penalties which in comparable situations have been upheld by the courts.

The petitioner's protestations of good faith and of reformation are therefore irrelevant. The statute does not require any showing by the Administrator of wilfulness or bad faith or of likelihood of repeated violations. In the face of the urgent emergency created by the war, Congress has fashioned a weapon against inflation which the courts are required to make available to the Administrator upon his request and a showing by him that violations have occurred. It is within the proper sphere of congressional judgment to decide, as Congress has here done, that inflationary dangers can only be met by swift judicial action against those who create inflationary incidents, regardless of their motive. The fight against inflation should not be endangered by imposing on the Administrator and his office the demands of time and money necessary to prove ir-

relevant facts, nor by shackling his discretion to decide which proven violators should be restrained.

ARGUMENT

THE ADMINISTRATOR, HAVING PROVED THAT PETITIONER HAD VIOLATED THE ACT, WAS ENTITLED AS OF RIGHT TO AN INJUNCTION

The Administrator at the trial made a clear and uncontroverted showing of repeated and extensive violations of the Act and the Regulation by the petitioner. In the face of this showing the district court was without discretion to withhold the injunction order prayed for in the complaint. We submit that this conclusion follows inescapably from the directive language of the Act, and that it is reinforced not only by the Act's legislative history and background but also by the practical considerations of wartime emergency which surrounded the Act's adoption. The contrary arguments of the petitioner, drawn largely from conventional equity practice, are without relevance to this case.

I

SECTION 205 (a) OF THE ACT IN TERMS REQUIRES THE ISSUANCE OF AN INJUNCTION OR OTHER ORDER ENFORCING COMPLIANCE UPON A SHOWING THAT VIOLATIONS HAVE OCCURRED

1. *The Language of the Act, and the Reasons Impelling Its Adoption*

Section 205 (a) of the Act conditions the right of the Administrator to an injunction solely upon

a showing by the Administrator that the defendant has engaged, or is about to engage, in acts or practices which violate the Act. When such a showing is made, "a permanent or temporary injunction, restraining order, or other order shall be granted without bond." The statutory language is mandatory. The usually mandatory character of the word "shall" (*Escoe* v. *Zerbst*, 295 U. S. 490, 493; cf. *John Hancock Ins. Co.* v. *Bartels*, 308 U. S. 180) is here fortified by the contrasting use of the word "may" earlier in the same sentence. The section provides that the Administrator "may" apply for an injunction and that the injunction "shall" be granted. The use of the words "may" and "shall" in one sentence implies that each is used in its ordinary sense and not in the sense of the other. *Ballou* v. *Kemp*, 92 F. (2d) 556, 560 (App. D. C. 1937); *Federal Land Bank* v. *Hansen*, 113 F. (2d) 82, 84 (C. C. A. 2, 1940); *Jensen* v. *Lehigh Valley R. Co.*, 255 Fed. 795 (S. D. N. Y. 1919); *Murray* v. *Edes Mfg. Co.*, 305 Mass. 311, 25 N. E. (2d) 746; *State ex Inf. McKittrick* v. *Wymore*, 343 Mo. 98, 119 S. W. (2d) 941; *Smith* v. *School Dist.*, 241 Mich. 366, 217 N. W. 15; *State ex rel. Wandling Bros.* v. *Board of Education*, 127 Ohio St. 336, 188 N. E. 566.

The essential purpose of this statutory remedy is the protection of a vital public interest. The prohibited conduct, in and of itself, is deemed by the legislature injurious to the public. The reme-

dial order is therefore required without regard to the motive or intent of the violator. Absolute liability is no new thing in the law. Its appropriateness, indeed its necessity, have been recognized by both courts and legislatures where "the emphasis of the statute is evidently upon achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se.*" *United States* v. *Balint,* 258 U. S. 250, 252; *United States* v. *Dotterweich,* October Term, 1943, No. 5, decided Nov. 22, 1943; Holmes, *The Common Law* (1938), pp. 115–117.

The compelling reasons of public policy which call for this unqualified type of preventive statutory remedy in the field of monetary inflation are obvious. Effective control of inflation is a matter of the utmost urgent necessity for a nation at war today. (See the message of the President, July 30, 1941, 87 Cong. Rec. 6457, H. Rep. 1409, 77th Cong., 1st sess.) As said by the Senate Committee on Banking and Currency: "of all the consequences of war, except human slaughter, inflation is the most destructive" (S. Rep. No. 931, 77th Cong., 2d sess. (1942) pp. 2–3). Wartime raises in its sharpest form the peril of the "spiral" or runaway tendency in an inflationary price structure. By inexorable economic law every inflationary event or act produces further inflationary effects. The consequences of an inflationary incident, whether wilful or innocent, are rapid and

pervasive; its results are virtually impossible to undo. The effects of violations of wartime price controls are cumulative and irremediable, irrespective of the motive or intent, the good or the bad faith, of the violator. Accordingly, the enforcement of those controls must be speedy, uniform, and effective. Unless the Act is speedily, uniformly, and effectively enforced, the purpose of the Act—the protection of the economic life of the nation while at war—will not be realized. Inflation begins in little steps. If it is to be checked, it must be met early. Once inflation has gained headway, it is too late to stop it. "This is no matter of degree—successive trickles grow into torrents which sweep away the dam" (*Brown* v. *Mars, Inc.*, 135 F. (2d) 843, 849 (C. C. A. 8, 1943)).

To the end that the Act shall be speedily, uniformly, and effectively enforced, therefore, Congress has in specific and unambiguous terms provided that upon a showing that a person has violated the Act, an injunction shall issue. This does not make of the injunction a penalty imposed for past misdeeds. It looks only to the future. It forbids only illegal conduct, or, if affirmative in form, it simply compels obedience to the law. No punishment can be invoked under it unless and until it has been violated. True, the Act requires that an injunction issue upon a showing of past violations, even though there is no showing of

probable future violations in the specific case. But that does not transform a remedy into a penalty. Rather it represents a legislative determination that the likelihood of future violations by proven past violators is so serious that the protection of an exigent public interest requires the danger to be met with the safeguard of a court order. True it is also that injunctions are conventionally "framed and issued in terms . . . of the necessities of the *future*" (Pet. Br. 19). So it will be here, but as to one particular Congress has substituted its judgment of those necessities for that ordinarily exercised by the courts.[10]

That Congress intended the Administrator's right to an injunction to be absolute upon a showing that the Act has been violated is made clear by the legislative history of the Act when considered against the background of other statutes and the judicial interpretation placed upon them.

2. *The Legislative Background and History of the Act.*

Federal statutes providing for injunction in aid of their enforcement are common. Their provisions, however, vary widely. Some, such as the Sherman Act[11] and the Fair Labor Standards

[10] For this reason the district court's conclusion (R. 454) that an injunction "would have no effect by way of insuring better compliance in the future" is immaterial. The court below so held (R. 596).

[11] Act of June 2, 1890, c. 647, 26 Stat. 209, 15 U. S. C. 4.

Act,[12] merely confer jurisdiction on the district courts to enjoin violations of their terms; others, such as the Securities Act of 1933[13] and the Securities Exchange Act of 1934,[14] direct the issuance of injunctions, but only on proof of either *present* or threatened violations. Such statutes are variously qualified by a requirement of "cause shown", or "a proper showing."[15] A contrasting type, on the other hand, provides for the issuance of an injunction or cease and desist order upon proof of past violations, without qualification. Among statutes of this type are the Investment Company Act of 1940,[16] the Investment Advisers Act of 1940,[17] the Clayton Act,[18] the Federal Trade Commission Act,[19] and the National Labor Relations Act.[20]

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[12] Section 17, Act of June 25, 1938, c. 676, 52 Stat. 1069, 29 U. S. C. 217.

[13] Section 20 (b), Act of May 27, 1933, c. 38, 48 Stat. 86, 15 U. S. C. 77t (b).

[14] Section 21 (c), Act of June 6, 1934, c. 404, 48 Stat. 899, 15 U. S. C. 78u (a) (c).

[15] Under the Fair Labor Standards Act an injunction may be had only "for cause shown". Under the Securities Act of 1933 and the Securities Exchange Act of 1934 an injunction may be had only "upon a proper showing".

[16] Section 42, Act of August 22, 1940, c. 686, Title I, 54 Stat. 842, 15 U. S. C. 80a–41.

[17] Section 209, Act of August 22, 1940, c. 686, Title II, 54 Stat. 853, 15 U. S. C. 80b–9.

[18] Section 11, Act of Oct. 15, 1914, c. 323, 38 Stat. 734, 15 U. S. C. 21.

[19] Section 5, Act of Sept. 26, 1914, c. 311, 38 Stat. 719, 15 U. S. C. 45.

[20] Section 10 (c), Act of July 5, 1935, c. 372, 49 Stat. 543, 29 U. S. C. 160 (c).

When the Emergency Price Control Act was under consideration, information was available to Congress showing that under statutes of the type which did not unqualifiedly provide for the issuance of injunctions upon proof of violation, there had been considerable diversity of interpretation in the courts. The departments and agencies charged with their enforcement had maintained their view that an injunction should issue upon a showing of a violation alone, and this view had found sympathetic treatment by some courts. Cf. *Otis & Co.* v. *Securities and Exchange Commission*, 106 F. (2d) 579 (C. C. A. 6, 1939); *American Fruit Growers* v. *United States*, 105 F. (2d) 722 (C. C. A. 9, 1939). But the courts had not always agreed with this view, and when they had disagreed with it, they had frequently seized upon qualifying language to justify their conclusion. Thus, the words "upon a proper showing" as used in the injunction sections of the Securities Act of 1933 and the Securities Exchange Act of 1934 had been construed by some courts as permitting them in their discretion to grant or deny injunctive relief, as the equities of each particular case might require. Cf. *Securities and Exchange Commission* v. *Lawson*, 24 F. Supp. 360 (D. Md. 1938).[21] A similar construction had been placed

[21] Petitioner states in its brief (p. 34) that the Administrator has conceded that Congress left discretion in the courts under the Securities Act of 1933 and the Securities Exchange Act of 1934. We have not made, and do not

on the phrase "for cause shown" as used in the Fair Labor Standards Act. *Fleming* v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940).

On the other hand, full effect had been given to those statutes which provided without qualification for the issuance of an injunction, or cease and desist order, upon a showing of a violation without more. Thus, Section 5 of the Federal Trade Commission Act (Act of Sept. 26, 1914, c. 311, 38 Stat. 719, 15 U. S. C. 45), which provides that the Federal Trade Commission "shall" issue a cease and desist order whenever it finds that a person has been using an unfair method of competition, had been construed as requiring the Commission to issue such an order upon finding that such practices had been engaged in. *Educators Ass'n* v. *Federal Trade Commission*, 108 F. (2d) 470 (C. C. A. 2, 1939); *Perma-Maid Co.*

now make, any such concession. The concession referred to (our memorandum on certiorari, pp. 10–11) applied only to the Sherman Act. The Securities and Exchange Commission has constantly pressed in the courts its view that the Securities Act and the Securities Exchange Act *require* the issuance of an injunction upon proof of violations, without more; and as noted in the text that view has been sympathetically regarded by at least one court. *Otis & Co.* v. *Securities and Exchange Commission*, 106 F. (2d) 579 (C. C. A. 6, 1939). As we develop further in the text, we believe that the divergent treatment accorded by the courts to such statutes as the Securities and Securities Exchange Acts was in large measure responsible for the attempt of Congress to use in *this* Act language sufficiently plain and unequivocal to still all further controversy.

v. *Federal Trade Commission,* 121 F. (2d) 282 (C .C. A. 6, 1941).

Again, the National Labor Relations Act (Act of July 5, 1935, Sec. 10 (c), c. 372, 49 Stat. 543, 29 U. S. C. 160 (c)) provides that if the "Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board *shall* state its findings of fact and *shall* issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action * * * as will effectuate the policies of this Act." Thus, while the Board enjoys some scope for the exercise of discretion in determining whether a particular case is one requiring an affirmative order and in choosing the particular affirmative relief to be ordered, it has no discretion to withhold the issuance of a cease and desist order where unfair labor practices have been found to have been engaged in. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines,* 303 U. S. 261, 265. This is the interpretation placed upon the section by the Board itself.[22]

[22] In its brief filed with the Circuit Court of Appeals for the Fifth Circuit in the case of *National Labor Relations Board* v. *Express Publishing Co.*, No. 9408, the Board stated:

"Upon the finding that the respondent had violated Section 8 (1) and (5) of the Act, the order requiring defendant to cease and desist from the unfair labor practices found

Section 205 (a) of Emergency Price Control Act is patterned on this latter type of statute.

The petitioner in its brief (Pet. Br. 35–39) seeks to avoid the parallel of these statutes not only by asserting that they have been judicially and administratively construed to leave discretion in the Administrator—in which, as we have shown, *supra*, footnote 22, the petitioner is in error—but also by pointing out that the language of the statutes refers to action by administrative agencies, and not to action by the courts. The language of these statutes does so refer, but that

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was mandatory. Section 10 (c) of the Act; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265."

Every brief filed by the Board in a similar case has contained the same statement.

On page 36 of its brief in this Court the petitioner here says: "There are numerous cases in which the Board has declined, in the exercise of a sound discretion, to issue a cease and desist order where the violations of the Act have ceased under circumstances which would indicate that they would not be resumed." This statement, if it means that the Board has on any occasion declined to issue a cease and desist order where it has found that unfair labor practices have been committed, is wholly inaccurate. From the date of its creation, the Board has never in any case declined to issue a cease and desist order, where it has found that such practices have been committed. In each of the eleven decisions of the Board cited by petitioner, the Board expressly declined to find that unfair labor practices had been committed. In all but three of the decisions the Board declined to inquire whether such practices had been engaged in because it felt that it was precluded from considering the matter by compromises or settlements reached before the decisions. In the other three cases—*A. H. Wirz, Inc.*,

does not defeat their historical pertinence. When Congress proposed in these statutes to require administrative agencies as quasi-judicial bodies to follow a certain course on the finding of certain facts, it found apt language of a directory character to express its intention; and the courts have respected this expression of intention. When Congress has used similar directory language to require similar action by the courts themselves, the courts should be no more reluctant to respect the congressional intention. Administrators are not courts, but the distinction is no solvent for the problems of this case; indeed, this Court has pointed out that a cease and desist

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9 N. L. R. B. 480 (1938), *Talladega Cotton Factory*, 9 N. L. R. B. 207 (1938), *Ferguson Bros. Manufacturing Co.*, 9 N. L. R. B. 189 (1938)—the Board refrained from inquiring whether the respondents had engaged in particular unfair labor practices on the ground that it was unnecessary to do so because the respondents had complied with the Trial Examiners' recommendations for remedying the effects of such practices if in fact they had been committed and constituted unfair labor practices. In each case the Board retained jurisdiction of the case. Likewise, in none of the decisions of the Federal Trade Commission cited by petitioner was there any finding that past violations had occurred. In none of the cases were the complaints dismissed. The Commission merely "closed" the cases subject to their being reopened without determining whether violations had been committed. Any tortuous inference that petitioner may seek to draw from this administrative practice is more than offset by the clear language of the statute which defines the Commission's duty, and by reported decisions readily accessible to Congress. Cf. *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282 (C. C. A. 6, 1941).

order of the Labor Board closely resembles an injunction order of a court, in that, when it is judicially confirmed, the courts may be called on to enforce it by contempt proceedings. *National Labor Relations Board* v. *Express Publishing Co.*, 312 U. S. 426, 433. The need for prompt and effective injunction against future misconduct by past violators is at least as great here as in the fields of labor relations and unfair trade practices.

That Congress intended to follow the model of these statutes in conferring upon the Administrator the absolute right to an injunction upon a showing of past violations is made even clearer by the legislative history of the Act.

When H. R. 5479, for which the Act in its final form was substituted, passed the House of Representatives, Section 205 (a) read:

> Whenever in the judgment of the President any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, or any regulation, order, or requirement thereunder, he may make application to the appropriate court for an order enjoining such acts or practices or for an order enforcing compliance with this Act or such a regulation, order, or requirement, and *upon a proper showing* a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Even at this stage of its legislative history the Act substituted the past tense for the present tense as

used in the Securities Act of 1933 and the Securities Exchange Act of 1934." But the bill still required that "a proper showing" be made as a condition to the issuance of an injunction.

As we have seen, there had been some disagreement among the courts as to whether such language in other statutes gave them discretion to grant or withhold relief as the equities of each individual case might require. Accordingly, the Senate Committee, with the conflicting judicial interpretations of the words "upon a proper showing" available to it, struck those words from the

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[21] The Securities Act of 1933 and Securities Exchange Act of 1934 provide for the issuance of an injunction against a person who "is engaged or is about to engage" in certain acts and practices which are denounced as unlawful. In *Securities and Exchange Commission* v. *Torr*, 87 F. (2d) 446 (C. C. A. 2, 1937), it was held that the Securities Exchange Act was to be given a literal interpretation and that an injunction should not be issued against one who had engaged in illegal practices but who was not engaging or about to engage in such practices at the time of suit. It subsequently developed in that case that violations had continued up until after the commencement of the suit, and an injunction was issued. *Securities and Exchange Commission* v. *Torr*, 22 F. Supp. 602 (S. D. N. Y. 1938). Similarly, the Grain Futures Act provided for the revocation of the license of a broker who "is violating" the Act. In *Cutten* v. *Wallace*, 298 U. S. 229, it was held that the license of a broker could not be revoked unless he was violating the Grain Futures Act at the time the revocation proceedings were started. The statute was later amended by the Commodity Exchange Act so as to permit the revocation of the broker's license for past violations. 49 Stat. 1498–1499, 7 U. S. C. 9. See *Nichols & Co.* v. *Secretary of Agriculture*, 131 F. (2d) 651 (C. C. A. 1, 1942).

bill and substituted for them the words "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." The change is compatible only with an intention that an injunction should issue as of course upon proof that the Act or the regulations have been violated.

The Senate Committee made its report on January 2, 1942. It pointed out that the House had passed the Act before Pearl Harbor; that "what was before a moderate program of rearmament and friendly aid is now unlimited national mobilization in a war for survival"; that the bill had to be "reconsidered in the light of those changed conditions"; that in amending the House bill, *"the Committee has sought to strengthen it"*; that "the Committee has largely accepted the substantive provisions of the House bill, but regards prompt enactment of *this stronger bill* as imperative to the safety of our country" (Sen. Rep. No. 931, 77th Cong., 2d sess. (1942), pp. 1–3).[24]

The intention that an injunction should issue as of course upon proof of violations is further evidenced by the Senate Committee's analysis of Section 205 (a) of the Act. At page 25 of the report, in the part devoted to a section-by-section analysis

[24] There were, of course, other changes in the bill besides that under discussion; but in view of the Senate Committee's report it is reasonable to assume that *any* change proposed was offered for the purpose of strengthening the bill.

of the bill, the Committee on Banking and Currency said:

> Section 205 (a) authorizes the Administrator to enforce compliance with the provisions of section 4 of the bill, whenever in his judgment, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4, by making application to the appropriate court *for an order enjoining* such acts or practices, *or for an order enforcing compliance* with such provision. Upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond. [Emphasis supplied].

It is to be noted that in its analysis of the section the Committee uses the expression "is to be granted without bond," thus construing the words "shall be granted without bond" as mandatory and not discretionary. *White* v. *Disher,* 67 Cal. 402, 7 Pac. 826.

Against this the petitioner urgently presses upon the Court language from page 10 of the Senate Committee report, where it was said that the injunctive remedy was included in the bill "in common with substantially all regulatory statutes." Even were there a conflict, the gen-

erality of this language (used in the course of the Committee's general description of the bill) must yield to the more specific description and construction of Section 205 (a) quoted above. But there is no conflict. The injunctive remedy *is* included here "in common with substantially all regulatory statutes," but that is not to say—and the Senate Committee did not say—that the injunctive remedy here included is identical in all its features with the remedy in "substantially all regulatory statutes." It could not be, for as we have seen there is no single form of injunctive remedy provided uniformly in federal regulatory statutes. Out of the divergent examples available, the Senate Committee selected, and Congress adopted, the particular form of injunctive remedy best fitted to meet the pressing public danger of monetary inflation, and in the interest of the greater public good chose to disregard questions of good faith and promises of good behavior on the part of individual violators.

II

THE EQUITABLE DOCTRINES URGED BY THE PETITIONER HAVE NO PLACE IN THE APPLICATION OF SECTION 205 (a)

The right of the United States and its agencies to an injunction provided by statute stands on a footing different from the right of private parties to an injunction in equity.

The latter is to protect private interests. The statutory injunction, on the other hand, is for carrying out congressional policies and vindicating public rights. Commonly, as here, it is furnished in a situation where equity jurisprudence would not necessarily have afforded relief. In such a case the conditions which have traditionally hedged about the granting of equitable injunctions have no application. The terms of the statute alone set the conditions which surround the remedy it creates. "The equitable doctrines relied on do not militate against the capacity of a court of equity as a proper forum in which to make a declared policy of Congress effective." *United States* v. *San Francisco*, 310 U. S. 16, 31.

This principle has found judicial expression in the application of a number of modern regulatory statutes. For example, the remedy for enforcement of orders of the National Labor Relations Board by decrees of the circuit courts of appeals (29 U. S. C. 160 (e)) is also equitable in nature. Yet this Court has held that where the Board has complied with the statutory requirements, the courts have no discretion to withhold a decree of enforcement even though they may differ with the Board as to the justice or wisdom of the Board's order. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342. Similarly, in *Securities and Exchange Commission* v. *Jones*, 85 F. (2d) 17 (C. C. A. 2, 1936),

certiorari denied, 299 U. S. 581, objection to a complaint for injunction under the Securities Act of 1933, on the ground that the complaint failed to allege the absence of an adequate remedy at law, was overruled "since the injunctive relief is provided for by the statute." And in *United States* v. *Adler's Creamery,* 110 F. (2d) 482 (C. C. A. 2, 1940), certiorari denied, 311 U. S. 657, it was held, with reference to the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. 608a (6) and (8), that "the claim that it is inequitable to grant a mandatory injunction to collect a debt past due must yield to the statutory provision of such a remedy." The rule is concisely stated in *Henderson* v. *Burd,* 133 F. (2d) 515, 517 (C. C. A. 2, 1943), decided under the Emergency Price Control Act: "Where an injunction is authorized by statute it is enough if the statutory conditions are satisfied."

Here Congress, in the interests of a timely and uniform enforcement of a measure designed to protect the economic life of the nation at war, has changed the usual rules of equity governing the issuance of injunctions, and has prescribed one condition, and one condition only, which the Administrator must meet in order to secure an injunction. When that condition is met the statute requires the court to issue an injunction. In the language of this Court in *United States* v. *San Francisco,* 310 U. S. 16, 30, "this case does not call for a balancing of equities or for the

invocation of the generalities of judicial maxims in order to determine whether an injunction should have issued."

1. *The language of the Act precludes the petitioner's proposed construction*

Notwithstanding the express statement in the Act of a single condition to the Administrator's right to an injunction, the petitioner, as did the dissenting justice below, urges that there be read into the Act a further condition, that the court shall be satisfied that the issuance of the injunction would be in accordance with traditional equitable doctrines. The petitioner seeks support for this view from the fact that Section 205 (a) directs the issuance of a "permanent or temporary injunction, restraining order, *or other order.*"

The words "or other order", however, find full import in the section without resort to the devitalizing construction proposed. The Administrator under Section 205 (a) may apply for two types of orders: (1) for an order enjoining the proscribed acts or practices, or (2) for an order enforcing compliance with the Act. It is thus within his discretion to apply for an order *forbidding* illegal conduct—in other words, a permanent or temporary injunction or temporary restraining order, as those terms are commonly understood—or, if he deems it more appropriate, for an order *commanding* affirmative action to

comply with the law. The duty of the court to aid the Administrator in "enforcing compliance" is thus most aptly phrased in terms of a duty to issue either an order prohibitive in nature, or some affirmative form of "other order", as the exigencies of the case may demand.

The petitioner suggests that the power to issue an "other order" embraces the power to issue an order dismissing the complaint, nothwithstanding proof by the Administrator that violations have happened. Such an order, or even an order such as suggested by the dissenting justice,[25] could hardly be regarded as an order "enforcing compliance."[26] Nor is the expressed duty of the court to "grant" an order on the Administrator's application consistent with the issuance of an order denying the Administrator all the relief for which he applies. And a direction by Congress that orders under the section be granted "without bond" would be far from apt if orders of dismissal were included in the congressional contemplation.

Had Congress intended petitioner's construction of the term "or other order", it would not have stricken from the bill prior to passage the phrase "upon a proper showing", which, at least

[25] "An order retaining [the case] on the docket, with the right in the Administrator, on reasonable notice and a showing that violations of the Act had been resumed, to again apply to the court for injunctive relief" (R. 610).

[26] See Report of the Senate Committee on Banking and Currency (Rep. No. 931, 77th Cong., 2d sess., p. 25).

in the view of some courts, would have imported the very result which petitioner now seeks to graft upon the Act.

The petitioner (Br. p. 25) terms our view of the congressional intent, and that of the court below, "pure hypothesis." If it is hypothesis, it is soundly grounded on the historical differentiation between affirmative orders and prohibitory orders. While an injunction may at times be used to coerce affirmative action, there is historical doubt as to the propriety of the use of the term with respect to a final decree of affirmative character. In strictness, the term "mandatory injunction" has been limited to interlocutory or preliminary injunctions.[27] Until comparatively recent times such injunctions were rarely granted. Indeed, it was once held that even a preliminary or interlocutory injunction would never be granted in mandatory form.[28] This rule is no longer generally followed, but lingering inhibitions persist, and explain the care of Congress to authorize expressly the issuance of affirmative orders as well as prohibitory injunctions.

This differentiation between affirmative and negative orders is not peculiar to the Emergency Price Control Act. It occurs in many regulatory statutes which contemplate enforcement of administrative orders by judicial action. For example,

[27] Pomeroy, *Equity Jurisprudence* (5th Ed. 1941), Sec. 1359.

[28] Id., *ibid.*

the Agricultural Adjustment Act of 1933 gives the district courts jurisdiction "specifically to enforce, and to prevent and restrain any person from violating any order, regulation, or agreement, heretofore or hereafter made or issued pursuant to" the Act. 7 U. S. C. 608a (6). Similarly, the Interstate Commerce Act (49 U. S. C. 16 (12)) authorizes judicial enforcement of orders of the Interstate Commerce Commission "by a writ of injunction or other proper process, mandatory or otherwise."

These historical facts and statutory precedents reenforce the construction which the language of the Act itself requires.[29]

As for the decisions of the district courts construing Section 205 (a) which the petitioner cites in support of its position, not all of them are

[29] The petitioner urges (Br. pp. 25–27) that the word "shall," when used in a grant of authority to the judiciary, is not ordinarily mandatory, but is the equivalent of "may". Such a rule, if it exists, is no more than a rule of statutory interpretation which must always yield to a clearly manifested congressional intention. *Ex parte Jordan*, 94 U. S. 248, 251; *United States* v. *Flynn*, 11 F. (2d) 899 (W. D. N. Y. 1926); *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342. In a case cited and heavily relied upon by the petitioner (*Becker* v. *Lebanon and M. Ry. Co.*, 188 Pa. 484, 496, 41 Atl. 612, 613 (1898)), it is said that "even if it [the word "shall" as directed to a court] be intended to be mandatory, it must be subject to the necessary limitation that a proper case has been made out for the exercise of the power". Here, Congress has said what a proper case shall be, and the Administrator, having proved such a case, is entitled to the relief he asks.

authority for the construction urged. In some, injunctions were denied not in the exercise of judicial discretion but because of the absence of adequate proof of violations. The cases cited which do tend to support the petitioner's contention were for the most part decided from the bench, and their language in many instances suggests that they were based on the authority of the district court's action in this case. At most, the cases below are in sharp conflict. In each of the following cases it was held that the Administrator was entitled to an injunction as of right upon proof that the Act had been violated: *Henderson* v. *Baldwin* (W. D. Pa. 1942) OPA Service, 622:43; *Brown* v. *Sackler* (D. Miss. 1943) OPA Service, p. 620:204; *Brown* v. *Society Brand Hat Co.* (E. D. Mo. 1943) OPA Service, p. 620:206; *Henderson* v. *C. Thomas Stores, Inc.*, 48 F. Supp. 295 (D. Minn. 1942);[30] *Brown* v. *Osorio* (D. P. R. 1943) OPA Service, p. 620:202; *Brown* v. *Buchsbaum* (S. D. N. Y. 1943) OPA Service, p. 620:306; *Bowles* v. *Home Run Bakery* (D. Hawaii 1943) not yet reported; *Bowles* v. *California Scrap Corp.* (N. D. Cal. 1943) OPA Service, p. 620:291. Cf. also *Henderson* v. *Detweiler* (D. Neb. 1942) OPA Serv-

[30] The petitioner seeks to distinguish this case on the ground that the court "found 'apathy and indifference' and 'inexcusable carelessness'. No attempt was made to correct mistakes. In such a case an injunction properly issues. There was no equity whatever on the side of the defendant" (Pet. Br. p. 40). The short answer is that the court did nothing

ice, p. 622:28; *Henderson* v. *Glosser* (W. D. Pa. 1942) OPA Service, p. 620:17; *Henderson* v. *Morgan* (D. Utah 1942) OPA Service, p. 622:72; *Brown* v. *McNeil* (W. D. Wis. 1943) 1 Price Control Cases, par. 51,815.

2. *Section 205 (a) does not improperly limit the discretion of the courts as courts of equity*

The petitioner in its brief (p. 22) contends that the Act as construed by the court below requires the issuance of an injunction "upon proof of *one* violation, no matter how far removed in time, how trivial in nature, or how innocent its cause" and that, viewed realistically, "the court below has held that *every* seller of goods in the United States *must* be enjoined by the courts if the Administrator chooses to demand it." The implication of the argument is that such a "novel and far-reaching step" cannot have been intended by

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of the kind. It found (p. 301) that the defendants had "admittedly, *either* through error, misunderstanding, or inexcusable carelessness", violated the Act. It declined to ascertain the excuses for the violations, saying (p. 303): "The Court does not find on this showing, however, that the violations herein enumerated were contumacious or willful. It may well be that they were entirely occasioned through carelessness, neglect and misunderstanding. Mutual and the Stores Company have stated in open court that they are anxious to comply strictly with the letter of the law. The Court has no reason to doubt their good faith or sincerity * * *." Nevertheless, the injunction issued. Just such a case has been made by the Administrator against the petitioner here.

Congress, and that therefore the Administrator's construction should be rejected.

To this argument there are several answers. In the first place, the case put is not this case. The petitioner's violations were many; they were not remote in time from the beginning of the suit; and they were due at least in part to carelessness. The construction which the petitioner condemns as extreme is therefore not involved here. It would be enough to support the judgment below if the Act were read so as to require an injunction upon a showing of substantial violation.[31] And the question where, beyond this point, the line is to be drawn is a futile one. Cf. Holmes, J., in *Noble State Bank* v. *Haskell*, 219 U. S. 104, 112;[32] *United States* v. *Laudani*, October Term, 1943, No. 71, decided January 3, 1944.

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[31] We do not suggest that the application of the Act should be so limited. However, if it were, or if it were construed to require a showing of probable future violations, we submit that the record below satisfies fully the need for such a showing. Any implications to the contrary in the opinion, findings of fact, or conclusions of law of the district court are clearly erroneous, and would require reversal. As the court of appeals said (R. 596): "The evidence would not support such findings".

[32] Cf. also the statement in the same case: "The power to compel, beforehand, cooperation, and thus, it is believed, to make a failure unlikely and a general panic almost impossible, must be recognized, if government is to do its proper work, unless we can say that the means have no reasonable relation to the end."

But there are other fundamental objections to the contention. Congress gave the Price Administrator a herculean task. He was called upon to frame price and rent regulations that might range over virtually our entire economy. He was charged with the duty of enforcing these regulations effectively so as to prevent inflation. Surely it was to be expected that the legislature which imposed on the Administrator such vast obligations in time of emergency would entrust him with great responsibilities. In enforcing the Act he could, practically, invoke court sanctions against only a small proportion of violators,[33] and if he was to operate successfully he must be endowed with, and trusted to exercise with discretion, the widest possible power of selection.[34] The Act reflects congressional appreciation of this need for wide scope of judgment in the Administrator. It does not *require* him to proceed whenever he

[33] This is emphasized by the petitioner's assertion (Br. p. 22) that every seller in the country must have violated the price regulations at some time.

[34] Cf. *United States* v. *Dotterweich*, October Term, 1943, No. 5, decided November 22, 1943: "To attempt a formula embracing the variety of conduct whereby persons may responsibly contribute in furthering a transaction forbidden by an Act of Congress, to wit, to send illicit goods across state lines, would be mischievous futility. In such matters the good sense of prosecutors, the wise guidance of trial judges, and the ultimate judgment of juries must be trusted. Our system of criminal justice necessarily depends on 'conscience and circumspection in prosecuting officers.'"

finds infractions; it *permits* him to do so. The faithful performance of his duties would impel him strongly to use his power of selection to bring to court only those cases which have significance from the viewpoint of obtaining wide compliance with the regulations. It is not unreasonable to suppose that Congress saw in this natural tendency to self-restraint a very real safeguard against suits grounded on trivial, or genuinely innocent, or remote, violations.

We have urged above the analogy of the National Labor Relations Act, and we urge it again here. The petitioner (Br. p. 43) rejects this analogy on the ground that under that act "the exercise of discretion by the administrative tribunal is surrounded with the normal safeguards—hearings, reports, exceptions, briefs, and the like." But, as we have shown, *supra,* footnote 22, the discretion of the National Labor Relations Board inheres not in the judgment whether to issue a compliance order when a violation has been shown (since such issuance is mandatory), but in the judgment whether to institute an administrative proceeding at all. At that stage—the stage of selection of cases for action—the discretion is as unprotected by procedural hedges as is the discretion of the Price Administrator in the selection of cases for injunctive proceeding in the courts. In both situations the procedural safeguards come into play only when

the hearing is held to determine, on the proof, whether a violation has occurred; and if so, what particular form of remedy to apply. Under the National Labor Relations Act that issue is determined by the Board (subject to modification by the court); here it is determined by the court; but the issues are identical.

The construction which we urge does not, as the petitioner implies, make a mere rubber stamp of the courts. Their responsibilities here are far greater than under the National Labor Relations Act, for here they are not bound by the findings of the Administrator if supported by evidence. In a proceeding instituted by the Administrator, the court exercises the true judicial function of determining whether the Administrator has proved the violations he has charged. In the discharge of this function the court weighs evidence, finds facts, and construes and applies the law. When the violation of law is established to the satisfaction of the court, judicial judgment finds further latitude in the determination of the precise form and scope of the remedy. Cf. *Henderson* v. *Burd*, 133 F. (2d) 515, 517 (C. C. A. 2, 1943); *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 265. The only element of judgment withdrawn from the courts is the judgment *whether* to enforce the Act when violations are proven. On that, the Congress has

plainly and explicitly substituted its own judgment.[35]

3. *Section 205 (a) reasonably rejects as irrelevant evidence of good faith and of reformation*

Wilfulness is not ordinarily a necessary ingredient of the case which must be made to secure a statutory injunction. See cases cited pp. 37–38, *supra*. Under the Emergency Price Control Act the Administrator need not show that the proven violations were wilful. This clearly follows from the inclusion of the word "wilfully" in Section 205 (b), providing criminal sanctions, and from its conspicuous omission from Section 205 (a). Cf. *Missel* v. *Overnight Motor Transportation Co.*, 126 F. (2d) 98 (C. C. A. 4, 1942), affirmed, 316 U. S. 572.

Admittedly, the purpose of an injunction is to deter and not to punish. The fact that the petitioner in the past may not have violated the Act wilfully—may have acted in good faith—may support an inference that it will act in good faith in the future. But the same fact will not support or

[35] Even on that, there remains some play for application of the maxim *de minimis*. See *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 607; *Goldberg* v. *Worman*, 37 F. Supp. 778 (S. D. Fla. 1941); *Gerdert* v. *Certified Poultry & Egg Co.*, 38 F. Supp. 964 (S. D. Fla. 1941). In this connection, however, it should be noted that the fact that a violation was single would not necessarily justify resort to the maxim. Even single violations may often be so flagrant, or so large, as to warrant judicial proceedings.

sustain an inference that the petitioner will not in the future continue to violate the law as it has in the past. It may reasonably be supposed, on the record before the Court, that the petitioner will not in the future intentionally or purposely violate the Act. In terms of danger to the public interest, however, the innocent violation produces the same inflationary consequences as the guilty. Each is equally dangerous to the national welfare in wartime. Both must be judicially restrained if the statute is to be made practically effective.

The petitioner suggests that an injunction against a willing conformist is a futile thing, and that Congress should not be supposed to have demanded such a remedy from the courts. But by petitioner's own admission, good faith did not prevent its extensive violation of the Act in the past; and by the same token, if its protestations of past good faith are sincere—which we do not question—there is no reason to suppose that good faith alone, without the stimulus added by an outstanding injunction, will any more successfully secure compliance in the future. Congress well recognized here, as often elsewhere in enacting remedial social legislation, that the best way to bring about general public observance of high standards of conduct is to impose absolute responsibility for meeting such standards. Difficulties which can be most plausibly explained as inevitable if room is left for explanation are more likely to

be avoided if the law requires that they must be.[36]

The paramount considerations of public need justifying statutory provisions which, like Section 205 (a), impose civil sanctions notwithstanding protestations of good faith have often been recognized by the courts. Thus, in *Gimbel Bros.* v. *Federal Trade Commission*, 116 F. (2d) 578 (C. C. A. 2, 1941), a cease and desist order of the Federal Trade Commission was enforced against a department store which had published on two successive days a single advertisement inadvertently misdescribing certain merchandise. The court emphasized the protective rather than punitive purpose of the Federal Trade Commission Act. Whether or not the advertiser knew that its representation was false, the deception of purchasers and the diversion of trade from competitors was the same. Good faith was no defense.[37]

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[36] "There is no more certain way of securing attention to the safety of the men, an unquestionably constitutional object of legislation, than by holding the employer liable for accidents. Like the crimes to which I have referred they probably will happen a good deal less often when the employer knows that he must answer for them if they do." Holmes, J., concurring in *Arizona Employers Liability Cases*, 250 U. S. 400, 431, 432–433.

[37] See also *L. & C. Mayers Co., Inc.* v. *Federal Trade Commission*, 97 F. (2d) 365 (C. C. A. 2, 1938); *Missel* v. *Overnight Motor Transportation Co.*, 126 F. (2d) 98, 111 (C. C. A. 4, 1942), affirmed, 316 U. S. 572; *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282, 284 (C. C. A. 6, 1941); *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91, 94 (C. C. A. 5, 1939).

Even criminal penalties may be imposed despite proof of innocent intent or good faith, when the emphasis of the law is upon "achievement of some social betterment rather than the punishment of the crimes as in cases of *mala in se.*" *United States* v. *Balint,* 258 U. S. 250, 252; *United States* v. *Dotterweich,* October Term, 1943, No. 5, decided November 22, 1943.

If criminal penalties may be so imposed, there is certainly no reason for supposing that, in the grave emergency created by the inflationary dangers of wartime, Congress meant less than it said in imposing the relatively mild civil sanction of injunction as a weapon against even innocent violations of the Act. The injunction in itself calls for no punishment. If it is obeyed, no penalties of any nature will follow. But though it will work little or no hardship on one who intends conscientiously to comply with the law, it is badly needed as a means of national social protection against one who does not. And even if, in a particular case, the court may be satisfied that the particular defendant intends in good faith to comply with the law, the facts of a particular case cannot justify overriding the congressional demand for injunction against all those proven by the Administrator to have engaged in past violations.[38]

[38] Though the injunction, importing a judicial warning of punishment in case of further violations even by innocent past violators, is sorely needed as a lever for the maintenance

Reformation, or proof that violations have now ceased, is no more compelling an answer to the demand for an injunction than is proof of past good faith. The claim has often been made that cease and desist orders under the Clayton Act, the Federal Trade Commission Act and the National Labor Relations Act should not issue when the proof showed that violations had ceased; and the claim has almost as often been denied.[39] The

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of adequate standards of social conduct, the petitioner and all others similarly situated are fully protected against actual unjust punishment on account of future trivial or inadvertent infractions. The courts retain unalloyed their right and duty to inflict or withhold, as justice may require, punishment for violation of the injunction. *Edison Electric Light Co.* v. *Goelet*, 65 Fed. 612 (S. D. N. Y. 1894); *Iowa Barb Steel-Wire Co.* v. *Southern Barbed-Wire Co.*, 30 Fed. 615 (E. D. Mo. 1887); *Morse* v. *Domestic Sewing Machine Co.*, 38 Fed. 482 (D. Mass. 1889).

[39] Clayton Act (38 Stat. 734, 15 U. S. C. 21): *Federal Trade Commission* v. *Goodyear Tire Company*, 304 U. S. 257 (1938). Federal Trade Commission Act (38 Stat. 719–720, 52 Stat. 111–112, 15 U. S. C. 45): *Bunte Bros.* v. *Federal Trade Commission*, 104 F. (2d) 996 (C. C. A. 7, 1939); *Educators Ass'n* v. *Federal Trade Commission*, 108 F. (2d) 470 (C. C. A. 2, 1939); *Perma-Maid Co.* v. *Federal Trade Commission*, 121 F. (2d) 282, 284 (C. C. A. 6, 1941); *Chamber of Commerce* v. *Federal Trade Commission*, 13 F. (2d) 673, 686 (C. C. A. 8, 1926); *Fairyfoot Products Co.* v. *Federal Trade Commission*, 80 F. (2d) 684, 686 (C. C. A. 7, 1935); *Federal Trade Commission* v. *A. McLean & Son*, 84 F. (2d) 910, 912 (C. C. A. 7, 1936); *Federal Trade Commission* v. *Wallace*, 75 F. (2d) 733, 738 (C. C. A. 8, 1935); *Federal Trade Commission* v. *Good-Grape Co.*, 45 F. (2d) 70 (C. C. A. 6, 1930); *Guarantee Veterinary Co.* v. *Federal Trade Commission*, 285

petitioner rests heavily upon cases under the Fair Labor Standards Act,[40] such as *Walling* v. *Buettner*, 133 F. (2d) 306 (C. C. A. 7, 1943), certiorari denied, 319 U. S. 771, and *Fleming* v. *Phipps*, 35 F. Supp. 627 (D. Md. 1940), as showing that a court of equity will not enjoin what has in good faith been discontinued before the suit for injunction was brought. But these cases, whether rightly

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Fed. 853, 859–60 (C. C. A. 2, 1922); *Arkansas Wholesale Grocers Ass'n* v. *Federal Trade Commission*, 18 F. (2d) 866, 871 (C. C. A. 8, 1927); *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307, 310 (C. C. A. 7, 1919).

Contra: L. B. Silver Co. v. *Federal Trade Commission*, 292 Fed. 752 (C. C. A. 6, 1923); *Federal Trade Commission* v. *Civil Service Training Bureau*, 79 F. (2d) 113 (C. C. A. 6, 1935). See *Butterick Co.* v. *Federal Trade Commission*, 4 F. (2d) 910, 913 (C. C. A. 2, 1925). In these cases the courts failed to refer to the statutory language, and insofar as they hold or contain certain dicta to the contrary, they must be deemed overruled by *Federal Trade Commission v. Goodyear Tire Company*, 304 U. S. 257, 260 (1938), cited *supra*.

National Labor Relations Act (49 Stat. 543; 29 U. S. C. 160): *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197 (1938); *National Labor Relations Board* v. *Boss Mfg. Co.*, 107 F. (2d) 574 (C. C. A. 7, 1939); *National Labor Relations Board* v. *Oregon Worsted Co.*, 96 F. (2d) 193 (C. C. A. 9, 1938); *National Labor Relations Board* v. *Gerling Mfg. Co.*, 103 F. (2d) 663, 664 (C. C. A. 7, 1939); *Eagle-Picher Mining and Smelting Co.* v. *National Labor Relations Board*, 119 F. (2d) 903, 910 (C. C. A. 8, 1941); *National Labor Relations Board* v. *Pure Oil Co.*, 103 F. (2d) 497, 498 (C. C. A. 5, 1939); *National Labor Relations Board* v. *Burke Machine Tool Co.*, 133 F. (2d) 618 (C. C. A. 6, 1943).

[40] Act of June 25, 1938, c. 676, 52 Stat. 1060; 29 U. S. C. 217.

decided or not, were decided under a statute which conferred upon the courts injunctive jurisdiction without clear qualification or direction as to the grounds for injunctive action. The court which decided *Walling* v. *Buettner, supra,* held in *Bunte Bros.* v. *Federal Trade Commission,* 104 F. (2d) 996 (C. C. A. 7, 1939), that no such doctrine applies under a statute in terms requiring an enforcement order upon proof of past violations. The Emergency Price Control Act is such a statute.

Practical considerations of gravest import explain and justify the obviously deliberate departure of Congress from the ordinary rules of equity jurisprudence. Violations of statutes and regulations which control the complex business affairs of today cannot be easily detected and demonstrated. Their discovery and proof require extensive investigation by skilled personnel, and involve large expenditures of time and money. Commonly, therefore, violations are suspended when business, by the fact of investigation, learns that its conduct is under suspicion. Added precautions, protestations of good faith, and demonstrations of the will to comply, are easily placed in the foreground by the time that the administrators are in a position to put their cases before the courts. *Mutatis mutandis,* the views expressed by the court in *Otis & Co.* v. *Securities and Exchange Commis-*

sion, 106 F. (2d) 579, 583 (C. C. A. 6, 1939), are persuasive here:

> * * * in view of the practical necessity of an investigation by the Commission prior to its institution of any proceeding, it is clear that, if the construction contended for by appellant were adopted the injunction provided for would be a remedy of slight efficacy. A dealer who saw the challenge of his activities that is implied in an investigation would probably discontinue them pending the investigation. It would seldom, if ever, be possible to show that a dealer was engaged in or about to engage in prohibited acts or practices when suit began, since the necessary investigation would nearly always have warned the dealer to desist.

The petitioner's claim to immunity because of its showing of this familiar pattern of behavior would in effect require the Administrator to close his case in simple reliance on a statement of good intentions given "in prophecy of or dread of suit" (*United States* v. *U. S. Steel Corp.,* 251 U. S. 417, 445). If the judgment of the district court stands, it will inevitably stand as a judgment condoning violations of the Act. This danger, even in the case of unintentional violators, Congress has tried to avert.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment of the court of appeals should be affirmed.

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JANUARY 1944.

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SUPREME COURT OF THE UNITED STATES.

No. 316.—October Term, 1943.

The Hecht Company, Petitioner, *vs.* Chester Bowles, Price Administrator of the Office of Price Administration. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 28, 1944.]

Mr. Justice Douglas delivered the opinion of the Court.

Sec. 205(a) of the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Supp. II, §§ 901, 925) provides: "Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond." The question in this case is whether the Administrator, having established that a defendant has engaged in acts or practices violative of § 4 of the Act is entitled as of right to an injunction restraining the defendant from engaging in such acts or practices or whether the court has some discretion to grant or withhold such relief.

Sec. 4(a) of the Act makes it unlawful for a person to sell or deliver any commodity in violation of specified orders or regulations of the Administrator. A regulation issued under § 2 of the Act and effective in May, 1942 (7 Fed. Reg. 3153) provided that no person should sell or deliver any commodity at a price higher than the authorized maximum price (§ 1499.1) as fixed or determined by the regulation.[1] Since maximum prices were fixed

[1] Sec. 1499.2 provided in part: "Except as otherwise provided in this General Maximum Price Regulation, the seller's maximum price for any commodity or service shall be: (a) In those cases in which the seller dealt in

with reference to earlier base periods the regulation also provided for the preservation and examination of existing records.[2] And provision was likewise made for the keeping of current records reflecting sales made under the regulation[3] and for the filing of maximum prices with the Administrator.[4]

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the same or similar commodities or services during March 1942: The highest price charged by the seller during such month—(1) For the same commodity or service; or (2) If no charge was made for the same commodity or service, for the similar commodity or service, most nearly like it; or (b) In those cases in which the seller did not deal in the same or similar commodities or services during March 1942: The highest price charged during such month by the most closely competitive seller of the same class—(1) For the same commodity or service; or (2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it. 'Highest Price Charged During March 1942'. For the purposes of this General Maximum Price Regulation, the highest price charged by a seller 'during March 1942' shall be: (a) The highest price which the seller charged for a commodity delivered or service supplied by him during March 1942; or (b) If the seller made no such delivery or supplied no such service during March 1942 his highest offering price for delivery or supply during that month."

The seller's maximum price for a commodity which cannot be priced under § 1499.2 was to be determined by the seller pursuant to a formula prescribed in § 1499.3.

[2] Sec. 1499.11 entitled "Base-period records" provided in part: "Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall: (a) Preserve for examination by the Office of Price Administration all his existing records relating to the prices which he charged for such of those commodities or services as he delivered or supplied during March 1942, and his offering prices for delivery or supply of such commodities or services during such month; and (b) Prepare, on or before July 1, 1942, on the basis of all available information and records, and thereafter keep for examination by any person during ordinary business hours, a statement showing: (1) The highest prices which he charged for such of those commodities or services as he delivered or supplied during March 1942 and his offering prices for delivery or supply of such commodities or services during such month, together with an appropriate description or identification of each such commodity or service; and (2) All his customary allowances, discounts, and other price differentials."

[3] Sec. 1499.12 entitled "Current records" provided: "Every person selling commodities or services for which, upon sale by that person, maximum prices are established by this General Maximum Price Regulation shall keep, and make available for examination by the Office of Price Administration, records of the same kind as he has customarily kept, relating to the prices which he charged for such of those commodities or services as he sold after the effective date of this General Maximum Price Regulation; and, in addition, records showing, as precisely as possible, the basis upon which he determined maximum prices for those commodities or services."

[4] Sec. 1499.13(b) provided: "On or before June 1, 1942, every person offering to sell cost-of-living commodities at retail shall file with the appropriate War Price and Rationing Board of the Office of Price Administration a statement showing his maximum price for each such commodity, together with an appropriate description or identification of it. Such statement shall be kept up to date by such person by filing on the first day of every succeeding month a statement of his maximum price for any cost-of-living commodity newly offered for sale during the previous month, together with an appropriate description or identification of the commodity."

There is no substantial controversy over the facts. Petitioner operates a large department store in Washington, D. C. and did a business of about $20,000,000 in 1942. There are 107 departments in the store and each sells a separate line of merchandise. In the fall of 1942 the Administrator started an investigation to determine whether petitioner was complying with the Act and the regulation. The investigation was a "spot check", confined to seven departments. In each of the seven departments violations were disclosed. As a result this suit was brought. The complaint charged violations of the maximum price provisions of the regulation and violations of the regulations governing the keeping of records and reporting to the Administrator. The Administrator prayed for an injunction enjoining petitioner from selling, delivering or offering for sale or delivery any commodity in violation of the regulation and from failing to keep complete and accurate records as required by the regulation. In its answer petitioner pleaded among other things that any failure or neglect to comply with the regulation was involuntary and was corrected as soon as discovered.

Numerous violations both as respects prices and records were discovered. Thus in six of the seven departments investigated there had occurred between May and October, 1942 some 3700 sales in excess of the maximum prices with overcharges of some $4600. The statements filed with the Administrator were deficient, some 400 items of merchandise being omitted. And there were over 300 items with respect to which no records were kept showing how the maximum prices had been determined.

There is no doubt, however, of petitioner's good faith and diligence. The District Court found that the manager of the store had offered it as a laboratory in which the Administrator might experiment with any regulation which might be issued. Prior to the promulgation of the regulation the petitioner had created a new section known as the price control office. That office undertook to bring petitioner into compliance with the requirements of the regulation in advance of its effective date. The head of that office together with seven assistants devoted full time to that endeavor. But the store had about 2,000 employees and over one million two hundred thousand articles of merchandise. In the furniture departments alone there were over fifty-four thousand transactions in the first ten months of 1942. Difficulties were

encountered in interpreting the regulation, in determining the exact nature of an article and whether it had been previously sold and at what price, etc. The absence of adequate records made it difficult to ascertain prices during the earlier base-period. Misunderstanding of the regulation, confusion on the part of employees not trained in such problems of interpretation and administration, the complexity of the problem, and the fallibility of humans all combined to produce numerous errors. But the District Court concluded that the "mistakes in pricing and listing were all made in good faith and without intent to violate the regulations."

The District Court also found that the mistakes brought to light "were at once corrected, and vigorous steps were taken by The Hecht Company to prevent recurrence of these mistakes or further mistakes in the future." The company increased its price control office to twenty-eight employees. New methods of internal control were instituted early in November, 1942 with the view of avoiding future violations. That new system of control "greatly improved" the situation. Petitioner undertook to make repayment of all overcharges brought to light by the investigation in case of customers who could be identified. It proposed to contribute the remaining amount of such overcharges to some local charity. The District Court concluded that the issuance of an injunction would have "no effect by way of insuring better compliance in the future" and would be "unjust" to petitioner and not "in the public interest". It accordingly dismissed the complaint. 49 F. Supp. 528. On appeal the Court of Appeals for the District of Columbia reversed that judgment, one judge dissenting. 137 F. 2d 689. That court held that the findings of the District Court were supported by substantial evidence, except that it did not consider whether the evidence supported the findings that an injunction would not insure better compliance in the future and would be unjust to petitioner. In its view the latter findings were immaterial. For it construed § 205(a) of the Act to require the issuance of an injunction or other order as a matter of course, once violations were found.

The case is here on a petition for a writ of certiorari which we granted because of the importance of the problem in the administration of the Act.

Respondent insists that the mandatory character of § 205(a) is clear from its language, history and purpose. He argues that

"shall be granted" is not permissive, that since the same section provides that the Administrator "may" apply for an injunction and that, if so, the injunction "shall" be granted, "may" and "shall" are each used in the ordinary sense. It is pointed out that when the bill (for which the Act in its final form was substituted) passed the House, § 205(a) provided that "upon a proper showing" an injunction or other order "shall be granted without bond."[5] The words "upon a proper showing" were stricken in the Senate and were replaced by the words "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices." And the Senate Report in its analysis of § 205(a) stated that "upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices, a temporary or permanent injunction, restraining order or other order is to be granted without bond." S. Rep. No. 931, 77th Cong., 2d Sess., p. 25. Further support for the view that the issuance of an injunction is mandatory once violations are shown is sought in the pattern of federal legislation which provides relief by injunction in aid of law enforcement. Some of those statutes[6] contain provisions quite close to the language of § 205(a). Others provide that an injunction or restraining order shall be granted "upon a proper showing"[7] or that federal district courts shall have jurisdiction to restrain violations "for cause shown".[8] The argument is that when Congress desired to give the district courts discretion to grant or withhold relief by injunction it chose apt words to make its desire plain.

We agree that the cessation of violations, whether before or after the institution of a suit by the Administrator, is no bar to the issuance of an injunction under § 205(a). But we do not think that under all circumstances the court must issue the injunction or other order which the Administrator seeks.

It seems apparent on the face of § 205(a) that there is some room for the exercise of discretion on the part of the court. For

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[5] H. R. 5479, 77th Cong., 1st Sess.

[6] "Upon a showing that such person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction or decree or restraining order shall be granted without bond." Investment Company Act of 1940, 54 Stat. 842, 15 U. S. C. § 80a-41; Investment Advisers Act of 1940, 54 Stat. 853, 15 U. S. C. § 80b-9.

[7] Securities Act of 1933, 48 Stat. 86, 15 U. S. C. § 77t(b); Securities Exchange Act of 1934, 48 Stat. 899, 15 U. S. C. § 78u(e).

[8] Fair Labor Standards Act, 52 Stat. 1069, 29 U. S. C. § 217.

the requirement is that a "permanent or temporary injunction, restraining order, or other order" be granted. Though the Administrator asks for an injunction, some "other order" might be more appropriate, or at least so appear to the court. Thus in the present case one judge in the Court of Appeals felt that the District Court should not have dismissed the complaint but should have entered an order retaining the case on the docket with the right of the Administrator, on notice, to renew his application for injunctive relief if violations recurred. It is indeed not difficult to imagine that in some situations that might be the fairest course to follow and one which would be as practically effective as the issuance of an injunction. Such an order, moreover, would seem to be a type of "other order" which a faithful reading of § 205(a) would permit a court to issue in a compliance proceeding. However that may be, it would seem clear that the court might deem some "other order" more appropriate for the evil at hand than the one which was sought. We cannot say that it lacks the power to make that choice. Thus it seems that § 205(a) falls short of making mandatory the issuance of an injunction merely because the Administrator asks it.

There is, moreover, support in the legislative history of § 205(a) for the view that "shall be granted" is less mandatory than a literal reading might suggest. We have already referred to a portion of the Senate Report which lends some support to the position of the Administrator. But in another portion of that Report there is the following reference to suits to enjoin violations of the Act: "In common with substantially all regulatory statutes, the bill authorizes the official charged with the duty of administering the act to apply to any appropriate court, State or Federal, for an order enjoining any person who has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of the bill. Such courts are given jurisdiction to issue whatever order to enforce compliance is proper in the circumstances of each particular case." S. Rep. No. 931, *supra*, p. 10. A grant of *jurisdiction* to issue compliance orders hardly suggests an absolute duty to do so under any and all circumstances. We cannot but think that if Congress had intended to make such a drastic departure from the traditions of equity practice, an unequivocal statement of its purpose would have been made.

We do not stop to compare the provisions of § 205(a) with the requirements of other federal statutes governing administrative agencies which, it is said, make it mandatory that those agencies take action when certain facts are shown to exist.[9] We are dealing here with the requirements of equity practice with a background of several hundred years of history. Only the other day we stated that "An appeal to the equity jurisdiction conferred on federal district courts is an appeal to the sound discretion which guides the determinations of courts of equity." *Meredith* v. *City of Winter Haven*, 320 U. S. 235. The historic injunctive process was designed to deter, not to punish. The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. We do not believe that such a major departure from that long tradition as is here proposed should be lightly implied. We do not think the history or language of § 205(a) compel it. It should be noted, moreover, that § 205(a) governs the procedure in both federal and state courts. For § 205(c) gives the state courts concurrent jurisdiction with federal district courts of civil enforcement proceedings. It is therefore even more compelling to conclude that, if Congress desired to make such an abrupt departure from traditional equity practice as is suggested, it would have made its desire plain. Hence we resolve the ambiguities of § 205(a) in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings under this emergency legislation in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect. *United States* v. *Morgan*, 307 U. S. 183, 194 and cases cited.

We do not mean to imply that courts should administer § 205(a) grudgingly. We repeat what we stated in *United States* v. *Morgan*, *supra*, 191, respecting judicial review of administrative action: ". . . . court and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each act-

[9] National Labor Relations Act, 49 Stat. 453, 29 U. S. C. § 160(c); Clayton Act, 38 Stat. 734, 15 U. S. C. § 21; Federal Trade Commission Act, 38 Stat. 719, 15 U. S. C. § 45(b).

ing in the performance of its prescribed statutory duty with
regard to the appropriate function of the other in securing
plainly indicated objects of the statute. Court and agency are
means adopted to attain the prescribed end, and so far as th
duties are defined by the words of the statute, those words sho
be construed so as to attain that end through coordinated acti
Neither body should repeat in this day the mistake made by
courts of law when equity was struggling for recognition as
ameliorating system of justice; neither can rightly be regarded
the other as an alien intruder, to be tolerated if must be,
never to be encouraged or aided by the other in the attainm
of the common aim." The Administrator does not carry the
burden of the war against inflation. The courts also have b
entrusted with a share of that responsibility. And their dis
tion under § 205(a) must be exercised in light of the large
jectives of the Act. For the standards of the public interest
the requirements of private litigation measure the propriety
need for injunctive relief in these cases. That discretion sho
reflect an acute awareness of the Congressional admonition t
"of all the consequences of war, except human slaughter, inflati
is the most destructive" (S. Rep. No. 931, *supra*, p. 2) and t
delay or indifference may be fatal. Whether the District Co
abused its discretion in dismissing the complaint is a quest
which we do not reach. The judgment must be reversed and
cause remanded to the Court of Appeals for that determination.

Reversed.

Mr. Justice FRANKFURTER agrees that § 205(a) of the Emergen
Price Control Act, apart from dispensing with any requirem
for a bond, does not change the historic conditions for the exerc
by courts of equity of their power to issue injunctions, accordi
to which the Court of Appeals should now dispose of this cause.

Mr. Justice ROBERTS is of opinion that the judgment of the Cou
of Appeals should be reversed and that of the District Cou
affirmed.